

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present:

The Hon'ble Justice Aniruddha Roy

AP-COM/88/2024

WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LTD.

VERSUS

TATA MOTORS LIMITED

**For award-debtor/WBDICL/
Applicant:**

**Mr. Kishore Datta, Senior Advocate,
Learned Advocate General,**

Mr. Siddharth Sethi, Advocate,

Mr. Manoj Kumar Tiwari, Advocate,

Mr. Raghvendra Pratap, Advocate,

Mr. Yuvraj Chatterjee, Advocate,

Mr. Suddhadev Adak, Advocate.

**For award-holder/
Tata Motors LTD./
Respondent:**

Mr. Sudipto Sarkar, Senior Advocate (VC),

Mr. Siddhartha Mitra, Senior Advocate,

Mr. Deepan Kr. Sarkar, Advocate,

Mr. Samriddha Sen, Advocate,

Mr. Soumitra Datta, Advocate,

Reserved on: 20.04.2026

Judgment on: 07.05.2026

ANIRUDDHA ROY, J.:

Facts:

1. This is an application filed under **Sub-Section (2) to Section 36** of the **Arbitration and Conciliation Act, 1996** (for short, the **Arbitration Act**).
2. The applicant WBIDC is the award debtor. The respondent TATA Motors is the award holder.
3. The nature of disputes and differences by and between the parties are not required to be narrated for adjudication of the instant application, as the issue in this application is purely on a question of law coupled with few facts. The facts to decide this application, which are relevant, are only stated.
4. The disputes between the parties arose with regard to allotment of a land and for setting up a car manufacturing unit for which the land was provided by the applicant to the respondent. On diverse counts disputes and differences arose. Arbitration proceeding was held before an Arbitral Tribunal consisting of **three learned arbitrators**. Ultimately an **award** was made and published dated **October 30, 2023** by the Arbitral Tribunal, **Annexure-A at pages 23 to 65** of the application (Volume-I) in favour of the respondent for an aggregate sum of **Rs. 765. 78 crores** along with **interest @ 11% per annum** as directed thereunder.
5. The applicant has challenged the said award under Section 34 of the Arbitration Act. Simultaneously, the applicant filed the instant application with the following prayers:

“(a) Unconditional stay of operation of the Award dated 30 October 2023 passed by the Tribunal, being Annexure "A" to the instant Application;

(b) An order of injunction restraining the Respondent, its men, agents and assigns from proceeding for enforcing the Arbitral Award dated 30 October 2023 passed by the Tribunal, till disposal of the present Application and Application under Section 34 of the Arbitration & Conciliation Act, 1996;

(c) Ad interim orders in terms of prayers above;

(d) Costs of and/or incidental to this application be borne by the Respondent;

(e) Such other or further order or orders be passed as this Hon'ble Court may deem fit and proper”.

6. In the interregnum the applicant has taken out an interlocutory application being **GA 01 of 2025** in connection with the instant application wherein, the applicant prayed for impleadment of the one learned Arbitrator/presiding arbitrator in the proceeding on the plea that since **fraud** has been alleged by way of **Bias** against the learned Arbitrator, an opportunity of hearing should be granted to the learned Arbitrator.
7. By a judgment dated **June 19, 2025**, the said impleadment application was dismissed by this Court. Being aggrieved thereby the applicant has preferred a Special Leave Petition being Special Leave to Appeal 21602 of 2025. Hon'ble Supreme Court by its order dated **August 8, 2025**, was pleased not to interfere with the judgment of this Court and accordingly, the Special Leave Petition was **dismissed**.
8. Both the applicant/award-debtor and the respondent/award-holder have filed their detail and extensive **first written notes** on argument and the same are on record. The parties have also filed their respective additional written notes on arguments and supplementary written notes on arguments.

Second Notes and finally **third** written notes, in the circumstances stated herein after.

Submissions:

9. Mr. Kishore Datta, Senior Advocate and Learned Advocate General for the State appearing for the applicant submits that, though the award passed against the applicant is a money award and applicant has already filed an application for setting aside of the arbitral award under Section 34 of the Arbitration Act, the same automatically would not by itself render the award unenforceable unless this Court in accordance with the provisions of **Sub-Section (3) to Section 36** of the Arbitration Act, on a separate application made for that purpose, stay the operation of the impugned award. **Sub-Section (3) to Section 36** provides, *inter alia*, that upon filing an application for stay of operation of arbitral award, any condition as it may fit deem by this Court can be imposed, upon reasons being so recorded. In case of a money award the Court should have due regard to the provisions for grant of stay of money decree as laid down under the provisions of **Order XLI Rule (5)** of the Code of Civil Procedure, 1908 (for short, **CPC**).
10. On a further reading of the provisions under Section 36 of the Arbitration Act Learned Advocate General submits that it provides further that where the Court is satisfied that a **prima facie** case is made out that the making of award was induced or effected by ***fraud or corruption***, the Court shall stay the award unconditionally pending Section 34 application.
11. Learned Advocate General appearing for the applicant has raised objection against **one** of the learned arbitrators/presiding arbitrator of the arbitral tribunal and submits that, at the post award stage it was discovered by the

applicant that, the said learned arbitrator had a very close connection and relation with the respondent, as on various occasions it was discovered that while launching several cars manufactured by the respondent, the said learned arbitrator either by himself or with his wife was present and attended launching/inaugural programmes for inauguration of diverse models of cars manufactured by the respondent from time to time. In support of his contention, Learned Advocate General has relied upon various photographs and news articles, inter alia, from **pages 222 to 241** of the instant application (Volume-II). The applicant also relies upon the averments made in paragraph 3 and the documents at pages 6 and 7 to the supplementary affidavit filed by the applicant affirmed on April 9, 2024.

12. The arbitration proceeding has commenced on **May 7, 2019**. Relying upon the minute of the commencement meeting learned Advocate General submits that ***‘all the 3 learned arbitrators made a declaration that they are not interested in any manner in any matter nor are they related to any party in any manner’***.
13. While analysing the documents at **pages 222 to 241** of the application (Volume-2) learned Advocate General submits that, these documents would demonstrate, inter alia, on June 24, 2020 (page 222), October 9, 2021 (page 230), October 11, 2021 (page 233), May 17, 2022 (page 239), June 6, 2022 (page 245), March 15, 2023 (page 257), the said learned arbitrator either himself or with his wife had attended the inaugural launching programme of diverse models of cars manufactured by the respondent. He submits that the arbitration proceeding took place during the period between **May 7, 2019** and **June 18, 2023**. Learned advocate general submits that on the

one hand the said learned arbitrator made a declaration that he had no interest involved with either of the parties and on the other hand he has meticulously attended the launching programmes organized by the respondent and/or its dealers for diverse models of cars manufactured by the respondent.

14. Learned Advocate General submits that the conduct of the said learned arbitrator was fraudulent within the meaning of **proviso 2 of Sub-Section 3 to Section 36** of the Arbitration Act, as prima facie evident from the materials on record. Hence, the applicant prays for an unconditional stay of the award dated October 30, 2020 pending disposal of the Section 34 proceeding for setting aside of the award.
15. On the strength of the facts and materials stated above, the applicant submits that the conduct of the learned arbitrator was totally **Bias** against the applicant while adjudicating the disputes between the parties.
16. Learned Advocate General submits that in the facts and circumstances of the present case, the applicant-petitioner/award-debtor is entitled to mandatory unconditional stay of operation of the award, in view of second proviso to Section 36 (3) of the Arbitration Act. Referring to Sections 36 sub-Sections (2) and (3) read with the first proviso thereto, he submits that the Court has enormous discretion for grant of an unconditional stay of the award considering facts of this case.
17. Learned Advocate General then submits on the scheme of the statute that prior to **October 23, 2015**, mere filing of a petition under Section 34 of the Act resulted in an automatic stay of the award, in view of the amendment to Section 36 of the Act effected from October 23, 2015 mere filing of an

application under Section 34 does not by itself stay the operation of the award and makes it unenforceable, unless the Section 34 Court expressly grants stay of operation of the arbitral award in accordance with the provision under sub-Section (3) to Section 36 of the Act on a separate application for such purpose. In the event, an unconditional stay is granted, it is obligatory on the Court to cite reasons.

18. He then submits that sub-Section (3) to Section 36 provides that upon filing of an application under sub-Section (2) praying for stay of operation of the arbitral award, the Court may, subject to such condition as it may deem fit grants stay of operation of the award for reasons to be recorded in writing. Proviso to sub-Section (3) stipulates that the Court while considering the application for grant of stay of an arbitral award for payment of money shall have due regard to the provisions for grant of stay of a money decree in accordance with **Rule 5 to Order XLI** of the Code of Civil Procedure, 1908 (for short CPC).
19. Learned Advocate General submits that under the amended provisions of sub-Sections (2) and (3) to Section 36 of the Arbitration Act, the Court has power and discretion to pass an order for unconditional stay of operation of the impugned award, if facts situations so warrant. In this regard, he has relied upon a decision of the Bombay High Court ***In the matter of: Ecopark India Paper Cup Pvt. Ltd. vs. Sphere International, reported at 2018 SCC OnLine Bom 540.***
20. He then submits that under the scheme of the provision of Section 36 read with Order XLI of CPC, the party opposing grant of stay cannot assert a proposition that it would be mandatory for the Court to impose a condition

for stay of the execution proceeding. Rather, it is for the Court to consider the facts of each case and exercise its discretion either to grant stay of the execution of the decree or to impose or not to impose any condition, as the Court may deem fit and proper. Reliance has also been placed ***In the matter of: Ecopark India Paper Cup Pvt. Ltd (Supra).***

21. He submits that the Court has power to grant an unconditional stay on the operation of the award and he placed reliance upon a decision of the Hon'ble Supreme Court ***In the matter of: Gazal Taneja and Others vs. Mahanagar Telephone Nigam Limited and Another, reported at (2013) 7 Supreme Court Cases 543.***
22. Learned Advocate General then submits that in **2021**, the second proviso was inserted under Section 36(3) of the Act. As per the second proviso, in a case where the making of award is induced or effected by **Fraud** or **Corruption** and a **prima facie** case to that effect is made out, it is incumbent on the Court to grant unconditional stay of operation of the arbitral award. Fraud can be of infinite variety and the expression "fraud" in the making of an award cannot be narrowly construed. **Bias** is a facet of **Fraud** and that in the present case, the making of the award is effected by fraud. On this ground alone, the impugned award ought to be stayed unconditionally. In the present case, as submitted by the learned Advocate General, the first procedural hearing took place on May 7, 2019, and the last hearing was on June 18, 2023, when the award was reserved. After passing of the award, the applicant has come to know of at least **seven incidents** when the said learned arbitrator allegedly held repeated engagements with the respondent which were never disclosed by him,

despite clear mandate of both Sections 12(1) and 12 (2) of the Act. The seven incidents cited by the applicant are apparent from the documents filed along with Section 36 application, the particulars are herein below :-

- (i) 24th June, 2020 @ Pg.222;
- (ii) 20th October, 2020 @ Pg. 228;
- (iii) 9th October, 2021 @ Pg. 230;
- (iv) 11th October, 2021 @ Pg.233;
- (v) 17th May, 2022 @ Pg. 239;
- (vi) 6th June, 2022 @ Pg.241;
- (vii) 15th March, 2023 @ Pg.257.

23. In addition, learned Advocate General submits that, during hearing before this Court, the applicant also has filed a supplementary affidavit dated April 9, 2024, wherein it has placed on record a press release dated May 30, 2022, which was available at the official website of the respondent. Immediately, after the said supplementary affidavit was filed, the respondent has removed the press release from its official website and thereby destroyed the evidence to vitiate the present proceeding. A gross mala fide on the part of the respondent, as alleged by the applicant. Learned Advocate General then submits that under Section 34 (2) (b) (ii), an arbitral award may be set aside by the Court if it is in conflict with the public policy of India. Explanation (1) (i) to Section 34 of the Act provides that an award is in conflict with the public policy of India if the making of an award is induced or effected by **Fraud** or **Corruption**. Under second proviso to Section 36 (3) of the Act, where the Court is satisfied that a prima facie case is made out that the making of award is effected by fraud or corruption, it shall stay the award unconditionally. The apprehension of bias has to be tested on the yardstick of reasonableness, as seen from the perspective of the affected

party. Further, only proof of bias may not be necessary as in most cases it is not possible. In this regard, learned Advocate General has placed reliance upon a decision of the Delhi High Court ***In the matter of: Microsoft Corporation vs. Zoai Founder, reported at 2023 SCC OnLine Del 3800*** and a decision of a Coordinate Bench ***In the matter of: C and E Ltd. (Components and Equipments Ltd.) and Another vs. Gopal Das Bagri and Others, reported at 2023 SCC OnLine Cal 2166.***

24. Mr. Datta then submits that the perception of bias on the part of the party is enough, further, when one is required to judge the case of another, justice should not only be done but it should also seem to be done. In this regard, he has placed reliance upon a decision of the Hon'ble Supreme Court ***In the matter of: Vinod Bhaiyalal Jain and Others vs. Wadhwani Parmeshwari Cold Storage Private Limited Through its Director and Another, reported at (2020) 15 Supreme Court Cases 726.***
25. Learned Advocate General then submits that the law is well settled, the test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely. What is relevant is the reasonableness of the apprehension in that regard in the mind of the party. A judgment which is the result of bias or want of impartiality is a nullity and the trial is *coram-non-judice*. Reliance is placed ***In the matter of: Ranjit Thakur vs. Union of India and Others, reported at (1987) 4 Supreme Court Cases 611.***
26. Learned Advocate General further submits that when a Court looks at the allegation of bias, a real likelihood of bias is enough and actual bias is not required. There must be a circumstance wherefrom a reasonable ground of

common prudence would think it likely or probable that the judge would, or did, favour one-side unfairly at the expense of the other side. He placed reliance upon a judgment ***In the matter of: Metropolitan Properties Regina vs. London Rent Assessment Panel Committee*** and ***In the matter of: Todd Figi Et Al. vs. New Hampshire Insurance Company.***

27. Learned Advocate General submits that fraud can be of infinite varieties and may take many forms. Fraud cannot be put in a straight-jacket and it has a very wide connotation in legal parlance. Sometimes it is audacious and unblushing fraud, in the contemplation of a civil court of justice, may be set to include properly all Acts, omissions and concealments which involve a breach of legal and equitable duty and injuries to another. In this regard he has placed reliance upon ***In the matter of: Venture Global Engineering vs. Satyam Computer Services Limited and Another, reported at (2010) 8 Supreme Court Cases 660.***

28. He submits that bias, if alleged against an arbitrator, can always be brought within the ambit and scope of the expression ***Fraud***. Bias and breach are contrary to public policy. It cannot be imagined that legislature intend not to make bias as one of the grounds of challenge to an arbitral award. The Court often grants unconditional stay of award on the ground of bias of the arbitrator. In support, Mr. Datta has placed reliance on the following decisions :-

- (i) ***In the matter of: D.R. Norula vs. Central Coal Fields Ltd. and Ors, CWJC No.2190 of 2011 [MANU/JH/0517/2001]***
- (ii) ***In the matter of: Bharat Heavy Electricals Ltd. vs. C. N. Garg, reported at 2011 (57) DRJ 154 (DB),***

- (iii) ***In the matter of: Arup Mohanty & Anr. Vs. Magma Fincorp Limited, AP 164 of 2019/GA 692 of 2019, vide order dated 1st April 2019.***

29. Learned Advocate General further submits that failure to disclose all relevant and material facts, which one has a positive duty to disclose, is also fraud. In support, he has relied upon a decision ***In the matter of: State of Maharashtra vs. Dr. Budhikota Subbarao, reported at (1993) 2 Supreme Court Cases 567.***
30. Learned Advocate General further submits that even if, one of the members of the tribunal is biased it affects the mind of other members as well. In a group deliberation each member of the group is bound to influence the others and his bias is likely to operate in a subtle manner. In support, he has relied upon the following decisions:
- (i) ***In the matter of: A. K. Kraipak vs. Union of India reported at (1969) 2 SCC 262;***
- (ii) ***In the matter of: P D Dinakaran vs. Judges Appointment Committee & Ors. reported at 2011 SCC OnLine SC 887;***
- (iii) ***In the matter of: Narinder Singh Arora vs. State (Govt. of NCT of Delhi) reported at (2012) 1 SCC 561.***
31. Learned Advocate General then submits that the law is well settled that the importance of independence and impartiality to arbitrators and mandatory disclosure requirement and also the doctrine of bias and the tests which are applied by Indian Courts while evaluating an award of the arbitrators. Disclosure allows an arbitrator to overcome an appearance of bias. Under the Arbitration Act an obligation to bias can only be waived by an express

agreement in writing and it cannot be conferred from conduct. In support, the learned Advocate General has placed reliance ***In the matter of: Central Organization for Railway Electrification vs. ECI SPIC SMO MCML (JV), reported at (2024) SCC OnLine SC 3219.***

32. He then submits that with a view to balance the award and to make it look fair, even if an arbitrator makes a part of the award as favourable, it does not mean that it is good in law. He submits that the applicant has made out a prima facie case that the award ought to be unconditionally stayed in view of the second proviso to Section 36 (3) of the Act. Prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is lead in support of the same were believed. In support, he has placed reliance upon the following decisions :-

- (i) ***In the matter of: Union of India vs. D. Khosla reported at 2022 SCC OnLine J&K 358;***
- (ii) ***In the matter of: Martin Burn Ltd. vs. R.N. Banerjee reported at 1957 SCC OnLine SC 51.***

33. In reply to the query raised by the Court, leaned Advocate General submits that it is settled law that in every application for an interim injunction in a pending suit, it is necessary for the Court to enter to some degree into the merits of the case in order to determine whether a prima facie case exists. When the Court declares that a prima facie case exists, it intends to say that the case of the plaintiff is not without merit. It is only an opinion rendered on the state of the evidence then existing on the record. In support, he places reliance on the following decisions :-

- (i) ***In the matter of: Kanshi Ram vs. Bansi Lal reported at 1976 SCC OnLine HP 38;***
- (ii) ***In the matter of: Kaka Ram vs. Mangat Ram, Judgment dated 5th February, 2024, CM No.387 of 2024 (High Court of Jammu & Kashmir);***

34. Learned Advocate General then submits that the said learned Arbitrator attended events, as narrated above, during the currency of the arbitration and yet did not make any disclosure thereof, as mandated under Section 12 of the Arbitration Act. Section 12 requires an arbitrator to disclose in writing any direct or indirect relationship and the purpose of the disclosure is to ensure that the arbitrator is impartial and independent. In the instant case, the seven events, narrated above, have not been disclosed. The said learned arbitrator has acted in breach of the mandatory requirements of law provided under Section 12 of the Act. In support, reliance has been placed ***In the matter of: Jagdish Kishinchand Valecha vs. Srie Equipment Finance Limited reported at 2021 SCC OnLine Cal 2076.***
35. In the event of violation of the mandate of the statute under Section 12(5) of the Arbitration Act, an unconditional stay of the impugned award is permitted, at the discretion of the Court. In support, learned Advocate General has placed reliance upon ***In the matter of: DRN Infrastructure Pvt. Ltd. vs. Konkan Railway Corporation Ltd. reported at AIR 2023 BOM 1323.***
36. Learned Advocate General further submits that an unconditional stay of award is permitted when the petitioner has made out an exceptional and compelling case. If this Court comes to a prima facie view of perversity and

patent illegality, an unconditional stay of a money award is permitted in law pending hearing of the Section 34 challenge. In support, learned Advocate General has placed reliance upon a Coordinate Bench decision of Bombay High Court ***In the matter of: Alkem Laboratories Limited vs. Issar Pharmaceuticals Pvt. Limited dated February 5, 2024 rendered in Commercial Arbitration Petition No. 389 of 2023.*** The said decision was not interfered by the Hon'ble Supreme Court in SLP (C) No.10764 of 2024 under order dated September 6, 2024 and also ***In the matter of: Jackie Kakubhai Shroff vs. Ratnam Sudesh Iyer, reported at 2018 SCC OnLine Bom 21214.***

37. Learned Advocate General further submits that there are several instances of judicial pronouncement when the Court is of the prima facie view that patent illegality exists on the face of the impugned award, the constant approach of the Court is to grant unconditional stay of the impugned award. In support, learned Advocate General has placed reliance on the following decisions :-

- (a) ***A Coordinate Bench decision of Bombay High Court dated May 8, 2024 In the matter of: Ramesh Sumermal Shah & Ors. Vs. Bharat Kishoremal Shah & Ors., rendered in Commercial Arbitration Petition (L) No. 10500 of 2023;***
- (b) ***In the matter of: CFM Asset Reconstruction Pvt. Ltd. And Another vs. SAR Parivahan Pvt. Ltd., reported at 2024 SCC OnLine Bom 1659;***

**(c) A decision of the Delhi High Court In the matter of : M/s
Vishnurupa Developers Pvt. Ltd. vs. M/s S&S Technocrats Pvt.
Ltd., OMP (Comm) 164 of 2023, order dated 24th May, 2023.**

38. Learned Advocate General thereafter has referred to various portions from the impugned award and submits that the tribunal has awarded compensation to the respondent without any evidence and came to its conclusion on certain SAP entries alone by accepting them as primary evidence, which admittedly there are not, according to the applicant. In paragraph 72 of the award the tribunal has recorded that the claim of the respondent was placed on audited books of account, whereas, the auditor concerned, was not called upon as witness and even though he was named in the list of witnesses. The tribunal has also not dealt with any of the serious doubt raised by the applicant in its pleadings or the argument and the written submissions with regard to the alleged audit. Learned Advocate General further drew attention on some portion of the impugned award and then submits that the tribunal rejected the counter-claim of the applicant which was in excess of Rs.260 crore, in just one sentence at paragraph 71 of the award. No reason for rejection was ascribed. The counter-claims were lodged by the applicant on various counts and heads. Detailed submissions were also made in support thereof as would be available in the written submission submitted before the tribunal. None of those submissions were taken into consideration by the tribunal while passing the award. In support of the counter-claim, the witness (RW-1) of the applicant had relied upon relevant report of the auditor and proved the same. Yet, the counter-claim was rejected without any reason and finding in the eye of law.

39. Learned Advocate General, Mr. Datta submits that all these factors, as narrated above, has vitiated the impugned award. The infirmities and illegalities are prima facie apparent on the face of the award. Hence, the award is not only bad and illegal, it warrants an unconditional stay till the final adjudication of the Section 34 proceeding. In view of the above, learned Advocate General prays for unconditional stay of operation of the impugned award till the final adjudication of the Section 34 proceeding.
40. Mr. Sudipto Sarkar, learned Senior Advocate appearing for the respondent/award-holder, at the threshold, has pointed out that the award in principal is **Rs.765.78 crore** and thereafter, calculating the interest and costs during the period **September 01, 2026 till August 21, 2025** is amounting to **Rs.1521,82,51,528.77/-**. The award is available at **Page 65** to the application – Volume 1.
41. Mr. Sarkar then submits that the instant application is frivolous one. The same is a result of an afterthought only to delay in making payment of the awarded amount to the respondent. He submits that post 2015 it is mandatory to secure the money award for obtaining stay of operation of the money award, so that execution proceeding does not take place during pendency of Section 34 proceeding.
42. Mr. Sarkar, learned Senior Advocate submits that, in an application for unconditional stay of an arbitral award under sub-Section (2) to Section 36 of the Act, unless the case made out squarely falls under either of the two heads, **Fraud** or **Corruption**, provided under the second proviso to Section 36(3) of the Act, there can be no unconditional stay of such award. The consistent stand of the applicant is an allegation of **bias** against the said

learned arbitrator and **neither fraud nor corruption**. The second proviso to Section 36(3) of the Act permits unconditional stay of an arbitral award only when there is a irrefutable case of fraud or corruption. This proviso was introduced by way of an **amendment** in **2021**. In support, learned Senior Advocate has placed reliance upon a decision ***In the matter of : WBSIDC vs. KIDCO reported At 2023 SCC OnLine Cal 2142.***

43. Learned Senior Advocate then submits a prima facie case under Section 36 (3) must mean a finding that the award was induced by fraud on the face of the record or from a first blush like at the said award. It would mean that the fraudulent inducement or effectuation qua the making of the award must be plain and read to be discovered even without going into the merits or a detailed enquiry into the facts. Fraud has to be obvious to the eye for unconditional stay of an arbitral award. The applicant has failed to make out or satisfy any such test in its favour. In support, he has relied upon a decision of this Court ***In the matter of : SRMB Srijan Ltd. vs. Great Eastern Energy Corporation Ltd. reported at 2024 SCC OnLine Cal 2089.***

44. He then submits that, the purported act of fraud must substantially point to a consensus that the facts concealed or suppressed must have causative link with the facts constituted or culminated in the award or inducing or effecting making of the award. No such case has been made out by the applicant in Section 36 (2) application. Launching a new car at the invitation of a dealer and not that of the respondent is not inducing of fraud in making of the award. Therefore, no issue other than a prima facie case of an arbitral award being induced or effected by fraud or corruption can be relevant at

the present stage for deciding the said Section 36 (2) application. None of these statutory pre-conditions have been satisfied at the end of the applicant.

45. Mr. Sarkar then submits that, the instant application has been filed under the specific provision under sub-Section 3 to Section 36 of the Act, which is a statutory provision. Therefore, when an application has been filed under a specific statutory provision, the same has to qualify the tests laid down under the said specific statutory provision. The consistent plea of the applicant is the allegation of bias against one of the learned Arbitrators. Bias is not a ground for unconditional stay provided under sub-Section 3 to Section 36 of the Act. The second proviso to Section 36 (3) of the Act was introduced by virtue of an amendment with effect from October 23, 2015. The arbitral award can only be stayed unconditionally if a prima facie case that the making of the award was induced or effected by fraud or corruption is made out. No such case has been made out for bias in the instant application. No particulars have also been pleaded. Therefore, the instant application cannot be termed to be an application within the meaning of sub-Section (3) to Section 36 of the Act seeking unconditional stay of the award. In support, Mr. Sarkar once again placed reliance upon ***In the matter of : SRMB Srijan Ltd. (Supra).***

46. Mr. Sarkar then submits that bias is not a ground for unconditional stay under the second proviso to Section 36 (3) of the Act. Bias is neither fraud nor corruption and nondisclosure by an arbitrator or arbitrator having represented a party will not amount to fraud. In support, reliance has been

placed ***In the matter of : C and E Ltd. vs. Gopal Das Bagri reported at (2023) 2 HCC (Cal) 146.***

47. Grounds for setting aside the award under Section 34 cannot be considered in Section 36 (2) application. Further the second proviso to Section 36 (3) of the Act has to be strictly construed since it curbs out an exception to the general rule. The exception being the second proviso cannot govern or override the main section which has to be construed strictly. The proviso was introduced by 2021 amendment, as according to the settled law and the legislature, no unconditional stay was otherwise permissible or possible on any of the other grounds of challenge under Section 34. In support, reliance has been placed by Mr. Sarkar ***In the matter of : Satnam Singh vs. Panjab & Haryana High Court reported at (1997) 3 SCC 353.***
48. Mr. Sarkar learned Senior Advocate submits that the applicant has failed to make out any case of bias under the Arbitration Act. The case made out by the applicant for unconditional stay of the award is only the case of alleged bias on the part of the said learned arbitrator only because he attended the said alleged seven events concerning the third parties, who are the dealers of Tata Cars. The events were never organized by the respondent who is party to the arbitration proceeding.
49. Learned Senior Advocate submits that the statutory lists have been given under the Arbitration Act in detail under **5th and 7th schedules** read with **Section 12 of the Act. Explanation 1 to Section 12 (1) (a)** states that ground under the 5th Schedule shall guide in determining whether circumstance exists which give rise to **justifiable doubt** as to the

independence or impartiality of the arbitrator. This has been judicially interpreted being an exhaustive list.

50. He submits that Section 12(2) provides for an arbitrator to disclose to the parties in writing, without delay, any circumstance referred to in Section 12 (1) read with 5th schedule arises from time to time at the time of his appointment or thereafter and throughout the arbitration proceeding. The alleged seven events on which the applicant has raised objection that the said learned arbitrator was biased do not fall within the ambit and scope of the said 5th schedule either at the time of appointment of the said learned arbitrator or throughout the arbitration proceeding. At no point of time there was any allegation that any entry of the 5th Schedule was attracted. Specific submission of Mr. Sarkar is that as the arbitrator is meant to make a disclosure, it must know under what circumstance he shall do so. If none of the entry under the 5th Schedule contemplates any such circumstance, there is no obligation on the part of the arbitrator to disclose anything, save and except that the arbitrator has no interest on the issue under arbitration or any relation with the parties.

51. Learned Senior Advocate for the respondent submits that the 5th Schedule to the Arbitration Act is exhaustive. The complaint in the instant case is of non-disclosure despite an obligation to disclose. In order to be so bound the arbitrator must know that he was so obliged. The award-holder has admitted that no single entry in the 5th Schedule has been attracted or has been violated by the said learned arbitrator in the present case. Therefore, the question of any bias within the meaning of Arbitration Act does not arise. In support, the learned Senior Advocate has relied upon a decision ***In***

the matter of : Voestalpine Schienen vs. Delhi Metro Rail Corpn. Ltd. reported at (2017) 4 SCC 665.

52. Mr. Sarkar submits that the substantive grounds and rules for disqualification or ineligibility of an arbitrator are absolute and restricted to the conditions enumerated under the said 5th and 7th Schedules read with Sections 12 and 13 of the Act. Any allegation on any ground not enumerated in the 5th or 7th Schedule or other than those outlined in terms of Section 12 (5) of the Act cannot be sustained, as that would lead to an unforeseen consequence and result in the sanctity of the arbitration when the situation being made open to one not contemplated under the Arbitration Act. In support, reliance has been placed on a decision ***In the matter of : Chennai Metro Rail vs. Transtonnels Troy Afcons reported at (2023) SCC OnLine SC 1370.***
53. He further submits that the likelihood of bias, as argued on behalf of the applicant, is to be determined from a fair reading and/or fair and proper application of the statutory mandate laid down under Section 12 of the Arbitration Act. In support, Mr. Sarkar has once again relied upon ***In the matter of : C and E Ltd. (Supra).***
54. Mr. Sarkar learned Senior Advocate thereafter submits that the Arbitration Act has laid down the contractual parameters of impartiality and independence of arbitrators. ***Impartiality*** according to Law Lexicon means a man who is impartial is one who is not biased in favour of one party more than another ...The primary idea contained in the definition is freedom from personal bias. According to Oxford concise dictionary, 11th Edition, the expression ***Partial*** is defined as including: biased. Therefore, according to

Mr. Sarkar, although the expression “bias” has not been defined under the said Arbitration Act, the 5th and 7th Schedules to the Act are the heads of bias contractually agreed and no other head is permissible. This is a contractual arbitration and not a statutory arbitration. Parties had agreed on the modes, means and manner to proceed with the subject arbitration proceeding within the ambit of the said Arbitration Act and the Indian Contract Act, 1872 would also govern the field.

55. Referring to the impugned award Mr. Sarkar submits that all along it was the case of the applicant of bias against one learned arbitrator/presiding arbitrator. The award is a unanimous award of three learned arbitrators. One of the three learned arbitrators was the nominee of the applicant also. Admittedly, there has been no allegation of bias or fraud against the other two learned members of the tribunal. He further submits that no case has been made out by the applicant for unconditional stay of the award.
56. Mr. Sudipto Sarkar, learned Senior Advocate further submits that for stay of operation of the impugned award under Section 36 (2) of the Act, the entire awarded sum including the interest accrued thereupon has to be deposited or to be furnished as security and only then a money award can be stayed. Such deposit/security is a pre-condition for stay of operation of the money award. No special treatment can be granted to the applicant though the same is a State Authority. He further submits that post-deposit, the respondent may be permitted to withdraw the deposit upon furnishing solvent security to the satisfaction of the Court. In support, learned Senior Advocate has placed reliance upon the following decisions :-

- (a) ***In the matter of :Toyo Engineering Corporation vs. Indian Oil Corporation Limited, reported at 2021 SCC OnLine SC 3455;***
- (b) ***In the matter of :State of WB vs. Essex reported at 2024 SCC OnLine Cal 6791;***
- (c) ***In the matter of :Manish vs. Godawari Mavathawada Irrigation Development Corporation reported at 2018 SCC OnLine SC 3863;***
- (d) ***In the matter of : WBSIDC vs. KIDCO, reported at 2023 SCC OnLine Cal 2142.***

57. Mr. Sarkar learned Senior Advocate appearing for the respondent/award-holder on his next limb of submission submits that, the applicant had contemporaneous knowledge of the participation and attendance of the said learned arbitrator in the said alleged seven social events during the subsistence of the arbitration proceeding but not at any point of time the respondent has raised its objection under sub-Section (2) to Section 13 of the Arbitration Act. He specifically refers to the chronological events stated by the respondent at pages 18 to 22 to the affidavit-in-opposition filed by Tata Motors to IA GA(COM) No.1 of 2025. All the events spoken of by the applicant were organized by the dealers of the respondent who were not the party to the arbitration proceeding and none of the events were organized by the respondent, where the learned arbitrator had attended.
58. The arbitration proceeding was held during the period May 7, 2019 till October 18, 2023. The allegation of bias against one of the learned arbitrators raised by the applicant was based on a news article dated January 24, 2020 published by Hita vida covering an alleged event where the said learned arbitrator was attending and the same was organized by a

car dealer of Tata Motors. Learned Senior Advocate has referred to **pages 222 to 227 from Section 36 (2) application –volume 2.**

59. The articles/news items referred to by the applicant on the basis whereof the applicant had taken the plea of alleged bias against one of the arbitrators were there in the public domain, on the official website, at least since January 2020 and subsequent thereto during the currency of the arbitration proceeding. The copies of the news articles annexed by the applicant to Section 36(2) application shows that the applicant had access to the same in or around September 12, 2022, during currency of the arbitration proceeding, as would be evident from **pages 224 to 226** to the **Section 36(2) application – volume 2.** Mr. Sarkar submits that over the course of hearing on January 7, 2025, respondent to demonstrate such fact has made over a copy of the self-same article which was accessed by respondent in January 2025 and the same shows article published and the date of access in 2025 appearing under the heading “related news” and “latest news”. Further the date of access appears on top of the page which appears to have been removed from pages 222 to 227 by the applicant. While making these submissions, Mr. Sarkar has placed reliance on pages 30 to 35, specifically at pages 32-33 of the affidavit-in-opposition filed by the respondent in IA-GA(COM) No.1 of 2025.
60. With reference to the above facts and documents, Mr. Sarkar, learned Senior Advocate submits that the applicant failed to challenge the procedure of arbitration within 15 days from the date of actual knowledge under Section 13 (1) read with 12 (2) of the Arbitration Act. Accordingly, the tribunal including the said learned arbitrator was deprived of an opportunity to deal

with the contentions of the applicant. Thus, the applicant has waived its right within the meaning of Section 4 of the Arbitration Act to challenge the arbitration procedure. Inasmuch as, the alleged plea of bias against one such learned arbitrator can only be challenged in the Section 34 proceeding and not at Section 36 (3) stage. In support, he has further placed reliance upon the decision ***In the matter of : Chennai Metro Rail (Supra)***.

61. According to Mr. Sarkar, even if the applicant is permitted in law to raise the question of violation of Section 12 read with the 5th schedule to the Arbitration Act, the same can only be raised at the stage of Section 34 hearing and not at this stage under Section 36 (3) of the Act.

Dealing the submissions made on behalf of the applicant :

62. Mr. Sudipto Sarkar learned Senior Advocate while dealing with the submissions made by the learned Advocate General for the State on behalf of the applicant submits that the submissions made that there cannot be waiver by conduct of any right under Section 12 (5) of the Arbitration Act, unless it is in writing, is ex facie incorrect as Section 12 (5) applies only to the 7th schedule and not the 5th schedule. The submission made on behalf of the applicant is also contrary to Section 4 of the Arbitration Act.
63. Mr. Sarkar then submits that the applicant has nowhere stated when the alleged incidents of bias came to its knowledge, save and except an expression used by the applicant ***“recently (came) to know”*** after making of the award. In this regard he refers to the averment made in **paragraph 25 at page 12** to the **Section 36 (2) application**. This submission is contrary to the news articles disclosed by the applicant itself in its Section 36 (2) application. The submissions with regard to the time of knowledge of the

applicant in respect of alleged bias against the learned arbitrator is not only vague but also bold and devoid of truth and particulars and contrary to the records disclosed by the applicant in the Section 36 (2) application.

64. Mr. Sarkar then submits that all the aforesaid facts read with the existing records coupled with the submissions made by the learned Advocate General would demonstrate that there is at least a doubt as to when the applicant came to know such alleged seven social events and as such, no irrefutable acts of bias has been established, especially in the light of the statutory time line for such challenge having been laid down under Section 13 (2) of the Arbitration Act. Even one such event as alleged of September 2022 would suffice to disbelieve the case sought to be made out by the applicant.

Distinguishing the judgments :

65. Mr. Sudipto Sarkar, learned Senior Advocate appearing for the respondent/award-holder submits that the judgments cited by the learned Advocate General on behalf of the applicant would have no application and the ratios laid down therein would have no relevance in the facts and circumstances of the instant case.
66. With regard to the judgments ***In the matter of : Microsoft Corporation (Supra), In the matter of : Vinod Jain and Ors. (Supra), In the matter of : Venture Global (Supra), In the matter of : D. Koshla (Supra), In the matter of : Alkame Laboratory Limited (Supra), In the matter of : Jacki Kauko Bhai Sraf (Supra), In the matter of : CPN Associate Construction (Supra) and In the matter of : DRM Infrastructure Pvt. Ltd. (Supra)***, the learned Senior Advocate submits that these judgments

were rendered at Section 34 stage where the Court has to proceed with detailed enquiry while assessing an award within the scope of Section 34 of the Arbitration Act, whereas the instant application filed under Section 36 (3) of the Act. The scope of this application is totally different from Section 34 of the Act. Hence, the ratios decided in the said judgments would not apply in the instant application. Inasmuch as, some of the judgments were of pre 2021 amendment of the Arbitration Act, when the second proviso to Section 36 (3) was introduced with a retrospective effect from October 23, 2015.

67. ***In the matter of : D R Narula (Supra)*** Mr. Sarkar submits that this was not a judgment rendered in an arbitration case. It was a writ petition challenging the constitutional validity and vires of Sections 13 (3) and (4) of the Arbitration Act. The dispute arose therein in respect of an agreement which contemplated unilateral appointment of sole arbitrator by one party and arbitrator appointed was a former director of the respondent therein. The principles applied by the concerned High Court which were existing pre 2021 amendment under the said Arbitration Act. Hence, the ratio decided in the judgment has no relevance in the facts of this case.

68. ***In the matter of : Central Organization for Railway Electrification (Supra)***, Mr. Sarkar submits that the law laid down therein was specifically made prospective and would apply only to arbitrations where the arbitrator is appointed **after the date of pronouncement of the judgment i.e. November 8, 2024**. In the instant case the arbitration has commenced in 2019 when the tribunal was constituted. The issue framed by the Hon'ble Supreme Court for decision in the said judgment and the decisions rendered

thereupon with the ratio laid down therein are not applicable in the facts and circumstances of this case. The issue was relating to appointment process allowing a party to unilaterally appoint sole arbitrator. Principle of equal treatment of parties at that stage of the appointment for arbitrator and appointment process in a public-private contract permitting Government to appoint unilateral sole arbitrator.

69. ***In the matter of : Gopal Das Bagri (Supra)***, Mr. Sarkar submits in that matter the sole arbitrator appeared on behalf of one who was affiliated with one of the parties during pendency of the arbitration proceeding and the ratio was decided against the arbitrator's conduct which squarely violated the entries enumerated under 5th and 7th schedule to the Act, which is not the case in the facts herein. The Court reached to an independent finding that non-disclosure would not be fraud. Hence, the ratio laid down in the said judgment to the extent relied upon on behalf of the applicant are not applicable in the facts of this case.
70. ***In the matter of : Ranjit Thakur (Supra)***, learned Senior Advocate submits that this was not in a case under the Arbitration Act and the case arose from the disciplinary proceeding under the Army Act 1950. Thus, the ratio laid down in the said judgment has no application in the facts and circumstances of this case.
71. ***In the matter of : Gazal Taneja (Supra)***, Mr. Sarkar submits that this was not a case under the Arbitration Act. There was a civil suit pertaining to usage of telephone connection wherein the principle under Order XLI Rule 5 of CPC was applied which is otherwise a directory provision insofar as

Section 36 of the Arbitration Act is concerned. In any event for money award full deposit of the awarded sum is mandatory.

72. ***In the matter of : Jagadish Krisinchand (Supra)***, Mr. Sarkar submits in that case the arbitrator acted as arbitrator in another arbitration proceeding instituted at the instance of the respondent/award-holder. This fell within the ambit of the entries under 7th schedule. Hence, the ratio laid down in the said decision has no application in the facts of the instant case.
73. ***In the matter of : Metropolitan Properties (Supra)***, Mr. Sarkar submits that this is not an arbitration case. The chairman of the rent assessment committee was a solicitor who advised tenants due to which the landlord raised an objection of bias against him. Hence, the ratio laid down in the said judgment has no application in the facts of the instant case.
74. ***In the matter of : P. D. Dinakann (Supra)***, Mr. Sarkar submits this was not an arbitration case. In that case respondent/judge in question performed overt acts expressing opinion against the petitioner prior to the conduct of the judicial proceeding, as such the allegation of likelihood of bias was raised. The ratio laid down in the said judgment has no application in the facts of this case.
75. ***In the matter of : A. K. Crypack (Supra)***, Mr. Sarkar submits that this is not an arbitration case. This case consists of constitutional issue of public and does not relate to the commercial matter concerning contractual justice. In that case the member alleged to be biased being a member of a selection committee who was himself a candidate for selection for which the selection committee was deliberating. Hence, the ratio laid down in the said judgment shall not apply in the facts of this case.

76. ***In the matter of : State of Maharashtra (Supra)***, learned Senior Advocate submits that this is not an arbitration case. The case consists an application for declaration that a charge-sheet was null and void and the charges thereunder were vitiated by fraud as panchnama was fabricated. This is not the case of the instant case. Neither it is pleaded anywhere by the applicant that the respondent has induced the learned arbitrator or the arbitral tribunal to pass the impugned award. Fraud has to be strictly pleaded and proved. Hence, the ratio laid down in the said judgment shall not apply in the facts of the instant case.
77. ***In the matter of : Ramesh Sumermal Shah and Ors. (Supra)***, Mr. Sarkar submits that in the said case the arbitrator failed to deliver with one of the conditions of the party which the court held was prima facie suffering from illegality on the face of the award. The ratio laid down in the said case would not apply in the facts of this case, more so, under Section 36 (3) of the Arbitration Act.
78. ***In the matter of : Vishnurupa Developers (Supra)***, the learned Senior Advocate submits that the case arose out of rejection of review of an order. In this case the award impugned was passed rejecting the counter-claim of the petitioner which was in ignorance of the vital clause of the agreement. The ratio of the judgment shall not apply in the facts of the instant case, more so at the Section 36 (2) of the Act stage.
79. ***In the matter of : Kashi Ram (Supra) and Kakaram and Ors. (Supra)***, Mr. Sarkar submits that prima facie tests under Section 36 (3) of the Arbitration Act had not been satisfied in the facts of the instant application. No prima facie case of fraud or corruption made out by the applicant in its

application and the court cannot go into the merit of the award for a detailed enquiry at this Section 36 (2) stage. Thus, the ratio laid down in the said decision has no application in the facts of the instant case.

80. ***In the matter of : Ecopack India Power (Supra)***, Mr. Sarkar submits that the challenge therein was to an interim award passed under Section 31 (6) of the Arbitration Act and not a final award. In that case, the award was passed prior to 2021 amendment of the 1996 Act. The law thereafter has subsequently been changed.
81. ***In the matter of : Pam Developments and Toyo Engineering (Supra)***, it was in respect of applicability of principle of Order XLI CPC in relation with Section 36 (3) of the Arbitration Act. The said decision is also contrary to the law laid down by this Court ***In the matter of : Essesx (Supra)***. Hence, the ratio laid down in the said judgment has no application in the instant case which is post 2021 amendment of the Arbitration Act.
82. ***In the matter of : Arup Mohanty (Supra)***, Mr. Sarkar submits the facts in that case was incorrect recording in the minutes made by the arbitrator and discovery of incorrect disclosure regarding arbitrator's connection with the respondents. This case was also of pre 2021 amendment of the Arbitration Act and before the second proviso to Section 36 (3) of the Act came with retrospective effect from October 23, 2015. Thus, the ratio laid down in the said case has no application in the facts of the instant application.
83. ***In the matter of : Bharat Heavy Electricals Ltd. (Supra)***, Mr. Sarkar submits that the case arose out of a writ petition challenging the vires of Section 13 (3) and (4) of the Arbitration Act which was dismissed by the Delhi High Court. This case dealt with the Arbitration Act at its pre 2021

amendment stage even prior to 2015. Even if a party makes out an arguable case of bias which requires to be examined under a detailed enquiry, the same should have been raised at Section 34 stage and not at Section 36 (2) stage. Thus, the ratio of the said judgment has no application in the facts of the instant case.

84. ***In the matter of : Himansu Shake (Supra)***, Mr. Sarkar submits that this case did not consider ***Vestal Pine (Supra)***. Therefore, the finding in this judgment that the 7th schedule is not exhaustive is *per incurium*. Inasmuch as the facts of the instant case does not fall within the meaning of the 7th schedule to the Act. In that case, the arbitrator had a close family relationship with the family members of one of the parties. This is not the fact here. Thus, the ratio laid down in the said judgment has no application in the facts of the instant case.

In reply :

85. Mr. Datta, learned Advocate General for the State appearing for the applicant submits that the contention of the respondent that the petitioner was aware of the alleged connection of the said learned arbitrator with the seven events since 2020 and thereafter, during the currency of the arbitration proceeding is baseless and incorrect. The applicant has categorically stated in Section 36 application that it was not aware of the relationship between the respondent and the learned arbitrator and that it came to know the same after the award was made and published. He further submits that out of several documents and evidences, the respondent has picked up one news item and made its submission. The documents at pages

224 to 227 to Section 36 application, as alleged by the respondent that applicant had knowledge on September 12, 2022 has been denied.

86. Learned Advocate General further submits referring to second proviso to Section 36 of the Act which was introduced by way of amendment in 2021, that it provides additional ground for an unconditional stay on the operation of the award. Under this additional ground, if a party make out a prima facie case of fraud, the award has to be mandatorily stayed. He then submits that attempt on the part of the respondent to disassociate itself with these seven events is an afterthought. The news items were also available on the official website of the respondent.
87. In its written notes the applicant has dealt with the judgments cited on behalf of the respondent. While dealing with the judgments relied upon on behalf of the respondent, learned Advocate General made his submissions which are narrated herein below.
88. ***In the matter of : Satnam Singh (Supra)***, learned Advocate General submits that a proviso is not to be construed as excluding or adding something by implication. A proviso has been enacted as an exception or qualification to the main provision and does not travel beyond the provision to which it is a proviso. The second proviso does not in any manner take away the discretion available to the court under the first proviso to Section 36 (2) and 36 (3) to stay the award unconditionally. Hence, the ratio laid down in the said judgment has no application in the facts of the instant case. Section 36 second proviso was inserted in 2021 which only provides an additional ground for an unconditional stay on the operation of the

award. Under this additional ground if a party can make out a prima facie case of fraud, the award has to be mandatorily stayed unconditionally.

89. ***In the matter of : Reliance Industry Limited (Supra)***, learned Advocate General submits that this decision explains the difference and scope of application of the 5th and 7th schedule. It is further submitted that the said seven events gave rise to justifiable doubts as to the independence and impartiality of the learned arbitrator. In view of Section 12 (2) of the Arbitration Act, it was a continuous obligation of the said learned arbitrator to disclose the chain of events and non-disclosure thereof has deprived the applicant of a valuable right available under Section 12(3) read with Section 13 of the Arbitration Act. The same has also deprived the petitioner of its valuable right under Section 14 of the Arbitration Act. He submits that the ratio laid down in the said judgment has no application in the facts of the instant case.
90. ***In the matter of : Chennai Metro Rail (Supra)***, he submits that it is unclear how this decision assisted the respondent. In paragraph 42 of the judgment it is categorically mentioned that Section 12 requires a continuous disclosure and if this is not done, the law provides for ineligibility and disqualification. He submits that the ratio decided in the said judgment is of no assistance in the facts of the instant case.
91. ***In the matter of : HRD Corporation (Supra)***, learned Advocate General submits that the judgment only shows that the incidents mentioned in the schedules serve a guideline merely. Therefore, the schedules are not exhaustive. He submits that the ratio laid down in the said judgment will not support the contention of the respondent in the facts of this case.

92. ***In the matter of : Joy Engineering Works Limited (Supra)***, learned Advocate General submits that this is the settled and general proposition of law how to read a judgment.
93. ***In the matter of : Manish (Supra)***, learned Advocate General submits that it was a case under Section 37 of the Arbitration Act and not at Section 34 and Section 36 stage. Therefore, the ratio laid down therein will not apply in the facts of this case.
94. ***In the matter of : Toyo Engineering Corporation and Another (Supra)***, learned Advocate General submits that under Order XLI Rule 5, the Court also exercises its discretion and may grant a stay to the execution of a decree if sufficient cause is made out and the parties seeking stay if satisfies the Court that it will sustain substantial loss and, inter alia, satisfies the conditions as stipulated in sub-Rule 3 to Rule 5 therein. Thus, under the scheme of the provisions of Section 36 read with Order XLI Rules 1 and 5 of CPC, the party opposing the grant of a stay cannot assert a proposition that it would be mandatory for the Court to impose a condition for stay to the execution proceeding. It is for the Court to consider the facts and circumstances of the case and exercise its discretion.
95. ***In the matter of : Essex Development Investment (Supra)***, learned Advocate General submits that this judgment was challenged before the Hon'ble Supreme Court. By an order dated November 11, 2024, passed in SLP (C) No.20583 of 2024, Hon'ble Supreme Court held that the observations made in the said judgment would not be treated as a binding findings when the application filed under Section 34 of the Arbitration Act is taken up for consideration.

96. ***In the matter of : West Bengal Small Industries Development Corporation Limited (Supra)***, learned Advocate General submits that the facts are completely different. The most crucial difference on facts was in that case fraud was alleged. Therefore, the ratio decided in the said judgment has no application in the facts of the instant case.
97. ***In the matter of : SRMB Srijon Limited (Supra)***, learned Advocate General submits that on facts, the judgment is clearly distinguishable. In that case there was no allegation of bias or fraud. Hence, the ratio laid down in the said judgment has no application in the instant case.
98. In the light of the above, learned Advocate General submits that there was no substance in the submissions made on behalf of the respondent. Hence, the application should be allowed by granting an unconditional stay of operation of the impugned award.

Later

99. (a) The hearing of application was concluded on **August 28, 2025** when the parties had filed their written notes. The order dated **October 28, 2025** shows that the matter was mentioned at the instance of the applicant and it was submitted that after the judgment was reserved by this Court, Hon'ble Supreme Court had delivered judgment which would have a material bearing in support of the contentions of the applicant. Accordingly, by consent of the parties, the matter was fixed for further hearing and the order dated **August 28, 2025** was **recalled**. On November 18, 2025, Mr. Kishore Datta, Learned Advocate General appearing for the applicant has informed this Court that even thereafter Hon'ble Supreme Court had delivered

another judgment which would also have a material bearing on the issue under adjudication. Thereafter, the learned Advocate General has proceeded with his submissions on the basis of the said subsequent judgments delivered by Hon'ble Supreme Court. The order dated **December 12, 2025** shows that the learned Advocate General had placed reliance upon three judgments of Hon'ble Supreme Court. The matter was thus heard at length. The award-debtor/applicant has filed its **(additional) second written notes** and the award-holder has also filed its **(supplementary) second written notes**. The matter was heard and finally the **hearing** was **concluded** and the judgment was **reserved** on **January 29, 2026**.

(b) On **March 30, 2026** Mr. Kishore Datta, learned Advocate General once again mentioned the matter and has submitted that two more judgments of Hon'ble Supreme Court were required to be relied upon which were subsequent judgments. Accordingly, the matter was directed to appear under the heading "**to be mentioned**" on **March 31, 2026** when in the facts and circumstances and on the basis of the submissions of the parties recorded in the order dated March 31, 2026 and by consent of the parties, the order dated **January 29, 2026** was **recalled** and the matter was placed for further consideration in the list on April 16, 2026. On April 7, 2026 the matter was mentioned by Mr. Sudipta Sarkar, learned Senior Advocate appearing for the award-holder when the matter was directed to appear in the supplementary list on the very day and accordingly was taken up in presence of parties. The submissions and counter-submissions of the parties have duly been recorded in the said order of April 7, 2026. Mr. Sudipto Sarkar, learned Senior Advocate appearing for the award-holder

opposed vehemently the submissions of the learned Advocate General appearing for the award-debtor and prayed for recalling of the order dated **March 31, 2026**. After considering the submissions and counter-submissions of the parties, this Court disallowed the prayer of Mr. Sarkar and did not recall the order dated March 31, 2026 but, for ends of justice directed the award-debtor to file its written notes which shall be restricted to the judgments mentioned in the said order dated April 7, 2026 and shall be served upon the award-holder when the award-holder shall deal with the said two judgments and file its written notes and the matter was directed to appear on **April 20, 2026** under the heading “**to be mentioned**”. The order dated March 31, 2026 and April 7, 2026 speak for themselves.

(c) On **April 20, 2026** the matter appeared under the heading “to be mentioned” when both the parties have filed their respective **third written notes** and the hearing was **concluded** and **judgment** was **reserved**.

Post 28th August, 2025

100. Mr. Kishore Datta, Learned Advocate General appearing for the award-debtor/applicant submits that in addition to *fraud* and *corruption*, as provided under sub-Section (3) to Section 36 of the Arbitration Act, the Court is also empowered to exercise its discretion to grant an unconditional stay of the award in case of a fit and exceptional case. According to the learned Advocate General, the case in hand constitutes a fit and exceptional case warranting exercise of its discretion by this Court to grant an unconditional stay of the award. He reiterated his submission that there exists circumstance giving rise to justifiable doubt as to the independence and impartiality of one of the learned Arbitrators who served as presiding

arbitrator also. The principal plea, as already narrated above, taken on behalf of the applicant is that the said learned Arbitrator had an association with the respondent and he had failed to disclose the same at the commencement of the arbitral proceeding or during the currency thereof. Learned Advocate General has reiterated the said seven incidents with reference to those documents which are already narrated above and submits that the award is vitiated by patent perversity.

101. He submits that the award has been made having been induced and/or affected by fraud within the meaning of sub-Section (3) to Section 36 of the Act, as bias is an element of fraud.

102. The second plea in support of his submissions for fit and exceptional case to exercise discretion of this Court was that the claim of the award-holder/respondent was allowed without any reasons and the counter-claim of the applicant was rejected by arbitral tribunal without any reasons and in a single sentence. It has been further submitted that while rejecting the counter-claim, arbitral tribunal did not consider and appreciate the evidence on record.

103. In support of his contentions, learned Advocate General has placed reliance upon a judgment of the Hon'ble Supreme Court ***In the matter of : Lifestyle Equities C.V. & Anr. vs. Amazon Technologies Inc. reported at 2025 SCC OnLine SC 2153***. He submits that in this judgment, Hon'ble Supreme Court held that in exceptional cases, an unconditional stay of enforcement of the award may be granted even where the case does not fall within the ambit of the second proviso to sub-Section (3) to Section 36 of the Arbitration Act.

104. The next compartment of submission made by the learned Advocate General on behalf of the applicant is that the entire cause of action for the respondent to initiate arbitration proceeding was the basis of a judgment of the Hon'ble Supreme Court ***In the matter of : Kedar Nath Yadav vs. State of West Bengal reported at AIR 2016 SC 4156.*** The applicant contented that the land acquisition at Singur, West Bengal for Tata Nano Project, being declared illegal triggered **Clauses V (4)(a) and V (4)(b) of the lease deed dated March 15, 2007** and obliged the applicant to indemnify respondent for alleged capital expenditure. It is submitted on behalf of the applicant that it had categorically demonstrated before the arbitral tribunal that Clause V(4)(b) was never activated. The specific case of the applicant before the arbitral tribunal was that the respondent herein had already abandoned the project and shifted its operation from Singur in October 2008, at the time when the acquisition had been upheld by the Hon'ble Division Bench of this Court (Judgment dated 18th January, 2008). The shift was purely a commercial decision and there was no judicial finding then declaring the acquisition illegal or invalid. Consequently, there was no breach or misrepresentation by applicant and the respondent also did not thereafter use the demised land for any purpose.

105. Learned Advocate General appearing for the applicant submits that the entire cause of action of the respondent on the basis of the said judgment ***In the matter of : Kedar Nath Yadav (supra)*** stands negated in view of the law laid down by Hon'ble Supreme Court ***In the matter of : M/s Santi Ceramics Private Limited (supra).*** Consequently, the clause of the lease deed, referred to above, could neither have triggered nor invoked by

respondent. Therefore, the respondent did not have any cause of action for arbitration and the arbitral tribunal had failed to appreciate such plea taken by the applicant before it. He further submits that in view of the law laid down ***In the matter of : M/s Santi Ceramics Private Limited (supra)*** it has been decided that the ratio ***In the matter of : Kedar Nath Yadav (supra)*** does not confer any cause of action upon industrial or corporate entities, such as the respondent.

106. Learned Advocate General further submits that notably, ***In the matter of : M/s Santi Ceramics Private Limited (supra)***, the Hon'ble Supreme Court clarified that the relief granted ***In the matter of : Kedar Nath Yadav (supra)*** was a limited remedial framework anchored in the protection of vulnerable farmers and agricultural workers and was not intended to operate as a general remedy for all affected parties, particularly commercial entities. Hon'ble Supreme Court further held that relief meant to prevent impoverishment of disadvantaged communities cannot be extended to industrial/commercial enterprises, which possess sufficient resources and institutional access to pursue ordinary legal remedies. ***In the matter of : M/s Santi Ceramics Private Limited (supra)***, the Hon'ble Supreme Court rejected the respondent's claim of parity despite its plea of being deprived of industrial property. Likewise, TML cannot rely on alleged deprivation of land use to extend the scope of the ratio ***In the matter of : Kedar Nath Yadav (supra)***, which was meant for vulnerable farmers, not corporate entities.

107. In view of the above, learned Advocate General has submitted that an exceptional case has been made out when this Hon'ble Court has discretion to stay the award without imposing any condition whatsoever.

108. Mr. Kishore Datta, Learned Advocate General then submits that under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all courts including the High Courts. He submits that the law laid down ***In the matter of : Lifestyle Equities C.V. (supra)*** is binding upon this Court. Even if, a judgment of the Hon'ble Supreme Court is found to be obiter, the same is also binding upon the High Courts. In support, reliance has been placed ***In the matter of : Punjab Land Development and Reclamation Corpn. Ltd. vs. Labour Court reported at (1990) 3 SCC 682.***

109. Per contra, Mr. Sudipto Sarkar learned Senior Advocate appearing for the award-holder/respondent submits that on the plea of the applicant with regard to the allegation of fraud against the said learned Arbitrator, as bias is an element of fraud, detailed submissions have already been made and therefore, he shall not reiterate the same. He further submits that to cause a deeper enquiry into the allegation of fraud as alleged, is not within the scope and ambit of Section 36 of the Arbitration Act, the same might be done, if there any such allegation exists though not admitted by the respondent, in the pending Section 34 proceeding. Similarly, he submits that the correctness and justification of rejection of the alleged counter-claim of the applicant and allowing the claim of the respondent by the arbitral tribunal is not permitted to be gone into at Section 36 stage and the same may be within the scope of Section 34 of the Act.

110. Mr. Sudipto Sarkar learned Senior Advocate further submits that this is not an exceptional case. Neither the applicant has pleaded any such exceptional

case for which the Court should exercise its discretion to grant an unconditional stay of the award.

111. While dealing with ***In the matter of : Lifestyle Equities C.V. (supra)*** Mr. Sarkar submits that it is not an arbitration case. It arises out of a trade mark dispute where a suit filed for infringement of registered trade mark and compensation had been decreed ex parte. The defendant no.1 filed an appeal along with an application under **Order XLI Rule 1 (5) and 5(3) of the Code of Civil Procedure, 1908** (for short **CPC**) for stay of operation of such decree which was allowed without insisting on deposit of the decretal amount. ***Lifestyle Equities C.V. (supra)*** was not connected with Section 36 of the Arbitration Act. Reference to Section 36 of the Arbitration Act was made purely for academic purposes. The judgment had not considered the amendment to Section 36 of the Arbitration Act effected in 2021. He submits that the ratio laid down ***In the matter of : Lifestyle Equities C.V. (supra)*** is not binding.

112. To distinguish the judgment ***In the matter of : M/s Santi Ceramics Private Limited (supra)*** at the threshold Mr. Sarkar submits that the issue raised by the learned Advocate General on the basis of the said judgment touches the merits of the award whether the respondent had cause of action for arbitration. This is impermissible at Section 36 stage. ***In the matter of : M/s Santi Ceramics Private Limited (supra)*** the private acquiring party had also taken compensation and was guilty of gross delay, in view whereof the Hon'ble Supreme Court declined to grant any relief to such party. In the instant case, the respondent is the beneficiary of the acquisition. The respondent is neither acquiring body nor requiring body neither the land-

looser. Therefore, the ratio laid down ***In the matter of : M/s Santi Ceramics Private Limited (supra)*** has no relevance in the facts and circumstances of the case.

113. Mr. Sarkar while distinguishing the judgment ***In the matter of : Punjab Land Development and Reclamation Corpn. Ltd. (supra)*** submits that the judgment of the Hon'ble Supreme Court ***In the matter of : Lifestyle Equities C.V. (supra)*** is *per incuriam* and obiter would have no binding effect. Therefore, the ratio of the said judgment would have no application in the facts of this case.

114. **In reply**, learned Advocate General Submits that the decision of the Hon'ble Supreme Court ***In the matter of : Lifestyle Equities C.V. (supra)*** is a reasoned judgment and the principle laid down therein lays down the law with regard to the discretion of the Court under Section 36 of the Arbitration Act in granting unconditional stay of award in the event of an exceptional case.

115. Mr. Datta further submits that a purposive construction of Section 36 (3) of the Arbitration Act cannot be used to restrict the Court's power in a manner to defeat the principle of fairness, neutrality and integrity of arbitral tribunal. The statutory purpose of Section 36 is to regulate enforcement, while preserving the judicial discretion to protect parties to manifest injustice in appropriate cases. Therefore, according to learned Advocate General, the interpretation adopted ***In the matter of : Lifestyle Equities C.V. (supra)*** aligns with the object of the Act and cannot be brushed aside as inapplicable.

116. Learned Advocate General further submits that in any event, the present case demonstratively falls within the *exceptional case*. Records of the arbitration proceeding discloses before this Court would show serious procedural irregularities and denial of equal treatment, and circumstances gave rise to justifiable doubt as to the independence and impartiality of the said learned Arbitrator/presiding Arbitrator. These are grievances go to the root of the arbitral process and the credibility of the award itself. He submits that reliance placed ***In the matter of : Lifestyle Equities C.V. (supra)*** is well founded.

117. Learned Advocate General finally submits that the facts of the instant case warrant an unconditional stay of the award pending adjudication of the Section 34 challenge.

Post 29th January, 2026

118. Mr. Kishore Datta, learned Advocate General for the State appearing for the award-debtor submits that the Hon'ble Supreme Court is of the view that there is no legal necessity for courts to direct the deposit of the entire awarded amount as a condition precedent for deciding the proceeding with respect to challenge to an arbitral award. It has been submitted that the Hon'ble Supreme Court has clarified that an award-debtor shall not be required to deposit the entire decretal amount or furnish any bank guarantee as a condition precedent in a Section 34 proceeding. He submits that if the award-debtor is directed to furnish an undertaking along with particulars of immovable assets/properties, the same will be sufficient to secure the awarded sum and on that basis the operation of the money award can be stayed pending Section 34 proceeding. He submits that, the

Courts are empowered to exercise their discretion to grant an unconditional stay on the operation of an arbitral award, without requiring deposit of decretal amount or furnishing any bank guarantee. In support, he has relied an order dated **December 01, 2025 In the matter of : Mumbai Metro Rail Corporation Limited vs. L & T STEC JV Mumbai passed in Civil Appeal No.14483 of 2025.**

119. In response to the submissions made on behalf of the award-holder that a reading of Sections 13(2), 12(3), explanation 1 to Section 12(1) and Section 4 of the Arbitration Act demonstrates that if an arbitrator is not challenged within 15 days, the parties waived its right to object. It is contended that the award-debtor has always maintained its stand that it has not waived any right to object. He submits that a party must expressly agree in writing to waive the ineligibility of the proposed arbitrator. Moreover, it has been held that the right to object to the appointment of an ineligible arbitrator in terms of Section 12(5) of the Act, such a right cannot be taken away by mere implication. Notably, when an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. Unless an express agreement in writing within the meaning of Section 12(5) of the Arbitration Act is there, there shall not and cannot be waiver of the plea of the party concerned regarding ineligibility of the arbitrator within the meaning of the Seventh Schedule of the Act. Learned Advocate General further submits that when an arbitrator is *de jure* ineligible, the ineligibility strikes at the very root of the arbitrator's mandate. Further, an objection in relation to such ineligibility could be raised at any stage, including for the first time in the proceeding under Section 34 of the

Act as the award passed in such circumstance is non-est. The facts alleged by the award-debtor in the facts of this case showing the alleged ineligibility of the said learned arbitrator, was not disclosed during the arbitration proceeding by the learned arbitrator and as such, the ineligibility goes at the root. In support, he has placed reliance on the judgment of the Hon'ble Supreme Court ***In the matter of : Bhadra International (India) Private Limited vs. Airports Authority of India reported at 2026 SCC OnLine SC 7 decided on 5th January, 2026.***

120. Per contra, on behalf of the award-holder, at the threshold, it has been contended that both the said order and the judgment of the Hon'ble Supreme Court were there on January 29, 2026 and the award-debtor had and/or deemed to have knowledge thereof as on January 29, 2026. Thus, the conduct of the award-debtor was misleading and abuse of the process of law.

121. It has been contended on behalf of the award-holder that the order passed by the Hon'ble Supreme Court ***In the matter of : Mumbai Metro Rail Corporation Limited (Supra)*** was an order passed in connection with a Section 34 proceeding and not in a Section 36 case or scenario, as would be *ex facie* evident on the face of the order.

122. The award-holder further contended that the present proceeding is under Section 36(2) of the Arbitration Act. There is statutory bar under the Second proviso to Section 36(3) in granting an unconditional stay of arbitral award unless there is irrefutable case of fraud or corruption. In any event, no condition can be imposed for hearing a Section 34 application. After 2015 and 2021 amendments to Section 36 of the Arbitration Act, stay of arbitral

award can be granted pending Section 34 proceeding and any party seeking stay of operation of the arbitral award has to separately apply for such purpose under Section 36(2) of the Arbitration Act and only then can the court grants say of an award in terms of Section 36 (3) by directing deposit of awarded sum as a condition. Therefore, the observation of the Hon'ble Supreme Court in the order passed ***In the matter of : Mumbai Metro Rail Corporation Limited (Supra)*** would have no relevance or applicability in the present proceeding under Section 36(2) of the Arbitration Act.

123. On behalf of the award-holder, it has been further contended that the judgment ***In the matter of : Bhadra International (India) Private Limited (Supra)*** was rendered in a Section 34 proceeding and not under Section 36(2) of the Act. In the said judgment ineligibility of an unilaterally appointed arbitrator was alleged at Section 34 stage under Section 12(5) read with Seventh Schedule of the Arbitration Act. In that factual scenario, the judgment was delivered.

124. It has been contended on behalf of the award-holder that when an arbitration agreement is in violation of sub-Section (5) of Section 12 of the Act, the parties can neither insist on appointment of arbitrator in terms of agreement nor would any appointment so made be valid in the eye of law. Unilateral appointments are not consistent with the basic tenet of arbitration. It would not be reasonable for a party to apprehend that an arbitrator unilaterally appointed by the opposite party may not act with complete impartiality. The said judgment was rendered on the principle of Section 12(5) read with Seventh Schedule scenario. The Hon'ble Supreme Court opined that even if an award is passed with such an ineligibility of the

arbitrator, an aggrieved party may approach the Court under Section 34 of the Act.

Decision:

125. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that the scope of the provisions under sub-Section (2) to Section 36 and Section 34 of the Arbitration Act is required to be discussed in brief. Section 34 of the Arbitration Act provides for setting aside of arbitral award on the grounds mentioned therein. The law is also well settled that for scrutiny of an arbitral award a deeper enquiry by the Court is permitted under Section 34 of the Act, of course, subject to the restrictions imposed upon the Court within the meaning and scope of Section 34. Section 36 provides for enforcement of the award. Sub-Section (2), inter alia, provides that during pendency of a proceeding under Section 34, the filing of such an application shall not by itself render the award unenforceable, unless the Court grants an order of stay of operation of the said arbitral award in accordance with the provisions of sub-Section (3), and a separate application made for that purpose. Sub-Section (3) to Section 36 provides upon filing of an application under Sub-Section (2), the Court may, subject to such conditions as it may deem fit, grant stay of operation of the award for reasons to be recorded in writing. The first proviso to sub-Section (3) provides that the Court shall while considering the application for grant of stay in the case of arbitral award for payment of money, have due regard to the provisions of the Code of Civil Procedure, 1908 while staying the operation of the money award. The second proviso was introduced by virtue of an amendment of **2021** but

with effect from **October 23, 2025**, providing further that where the Court is satisfied a *prima facie* case is made out that, inter alia, making of an award was induced or affected by *fraud* or *corruption*, it shall stay the award unconditionally pending disposal of the challenge under Section 34 of the Award.

126. On a harmonious and meaningful reading of the provisions under Section 36 of the Arbitration Act after its amendment in 2021, it appears that unconditional stay of money award is permitted if it *prima facie* appears to Court that making of award was induced or affected by *fraud* or *corruption*. However, the said two expressions *fraud* or *corruption* have not been defined specifically in the statute. While making his submissions, learned Advocate General has specifically submitted that his submission is restricted only on the expression “fraud” and he submits that *bias* is an element of *fraud*. However, the expression “*bias*” has not been included anywhere under Section 36 of the Arbitration Act. Explanation 1 to sub-Section (2)(b) of Section 34 of the Act, inter alia, provides that for avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, inter alia, the making of the award was induced or affected by *fraud* or *corruption*.

127. On harmonious and conjoint reading of the said two provisions i.e. Section 34 and Section 36 of the Act, makes it clear that sub-Section (3) to Section 36 requires a *prima facie* view of Court on *fraud* or *corruption* whereas Section 34 does not contain the expression *prima facie*. Thus, Section 34 provides for a detail scrutiny of the award for setting it aside if the award is induced or affected by *fraud* or *corruption*. While adjudicating the instant

application, the Court has to make a limited enquiry to come to a *prima facie* view whether the making of the impugned award is induced or affected by *fraud* or *corruption*, which shall be a tentative finding of the Court without going into a detail and deeper enquiry on scrutiny of the award. While adjudicating a Section 34 proceeding, the Court has a wider power to cause a detail and deeper enquiry whether the making of award was induced or affected by *fraud* or *corruption* as, significantly, the expression “*prima facie*” has not been inserted by the legislature while enacting the provision under Section 34 of the Arbitration Act or in its amendment.

128. While alleging the conduct of the said learned Arbitrator/presiding arbitrator, the specific contention of the applicant was that the said learned Arbitrator was “*bias*”, which is an element of fraud. When a provision has been inserted in a statute under the second proviso to Sub-Section (3) to Section 36 of the Arbitration Act that the Court has to come to a *prima facie* finding of fraud resulting the award, a case of fraud has to be clearly made out. No particular of fraud has been specifically pleaded in the instant application. By drawing an inference with reference to certain set of facts which alleged to have taken place during pendency of the arbitration, the applicant contended that the said learned Arbitrator was bias, which is an element of fraud.

129. Explanation 1 to Section 12(i) (b) of the Arbitration Act provides that the grounds stated in the *Fifth Schedule* shall guide in determining whether circumstances exist which give rise to justiciable doubt as to the independence or impartiality of an arbitrator. On a close scrutiny of the entries enumerated under the *Fifth Schedule*, it appears to this Court that

none of those entries have been satisfied for the alleged ground of bias urged on behalf of the applicant. The expression *Bias* is also not included in the *Fifth Schedule*. Sub-Section (5) to Section 12 of the Arbitration Act, inter alia, provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject-matter of the dispute falls under any categories specified in the *Seventh Schedule* shall be ineligible to be appointed as an arbitrator. On a close scrutiny of the entries enumerated under Seventh Schedule of the statute, it appears to this Court that the alleged ground of bias, as argued on behalf of the applicant, does not include any of the act or omission enumerated in the entries under Seventh Schedule to the statute.

130. Both the said Fifth and Seventh Schedules are part of the statute. None of these schedules either defines or includes the expression “fraud” or “bias”. When the statute provides for a specific provision, the jurisdiction of the Court is circumscribed within the said provision to assess the allegations and counter-allegations alleged by the parties before it. In the event, it is found that the allegations and counter-allegations of the parties do not fall within such statutory prescription, the Court has no authority to supplant such allegations and counter-allegations or read them within the statute. This Court is of the considered view that, while adjudicating an application in terms of sub-Section (3) to Section 36 of the Arbitration Act, the *prima facie* satisfaction of the Court with regard to allegation of *fraud*, as alleged by the applicant, must be drawn primarily in the light of the provisions laid down under the Act read with the existing facts and materials before it. Thus, the submissions made on behalf of the applicant, to establish the

allegation of fraud against the said learned Arbitrator in the light of the provisions made under Sections 12 and 13 of the Arbitration Act is **not acceptable** to this Court and the **same is not sustainable**.

131. It is already discussed above that the scope and jurisdiction of Court in exercise of its power under Section 34 of the Arbitration Act is much wider than under Section 36 of the Arbitration Act. While adjudicating an application filed under sub-Section (2) to Section 36 of the Arbitration Act and the plea taken in support of unconditional stay of the award in the light of sub-Section (3) to Section 36 of the Arbitration Act, the scope of enquiry by the Court is very limited and the Court cannot go for a deeper and detail enquiry. Accordingly, the ratio of the **judgments rendered under Section 34 of the Arbitration Act** would not apply in the facts and circumstances of the instant case. *In the matter of : Microsoft Corporation (Supra), In the matter of : Vinod Jain and Ors. (Supra), In the matter of : Venture Global (Supra), In the matter of : D. Koshla (Supra), In the matter of : Alkame Laboratory Limited (Supra), In the matter of : Jacki Kauko Bhai Sraf (Supra), In the matter of : CPN Associate Construction (Supra) and In the matter of : DRM Infrastructure Pvt. Ltd. (Supra)*, the ratio laid down would not apply in the facts and circumstances of this case as the instant application has been filed under Section 36(2) of the Arbitration Act.

132. *In the matter of : D R Narula (Supra)*, the judgment was rendered by the Jharkhand High Court in a **writ petition** challenging the validity and vires of Section 13(3) and (4) of the Arbitration Act. The judgment is of 2001, whereas, the instant case is governed under the amended Arbitration Act

amended in 2021, when Second proviso to sub-Section (3) to Section 36 was introduced. Hence, the ratio decided in the matter pre 2021 amendment would not apply in the facts and circumstances of the instant case.

133. The judgment ***In the matter of: Central Organization for Railway Electrification (Supra)***, deals with the waiver of application of Section 12(5) under the Arbitration Act. The judgment was pronounced on **November 8, 2024**. The issue fell for consideration was the independence and impartiality of an arbitral tribunal in the light of both Arbitration and Contract Act. It was specifically held that the occasion for the Court to examine the constitution of the independent and impartial tribunal under the Arbitration clause will arise when one of the parties applies **under Sections 11, 14 or 34 of the Arbitration Act**. In the instant case, the award-debtor has filed an application under Section 36 (2) of the Act. Inasmuch as the ratio laid down in the judgment was specifically made prospective and would make applicable only to arbitrations where the arbitrator was appointed after the date of pronouncement of the judgment i.e., **November 08, 2024**. In the instant case, the arbitration had commenced in **2019** and the tribunal was constituted then. Hence, the ratio laid down in the said judgment would not apply in the facts of the instant case.

134. ***In the matter of: C and E Ltd. (Components and Equipments Ltd.) and Another (Supra)***, the sole arbitrator therein appeared on behalf of one who was affiliated with one of the parties during pendency of the arbitration proceeding and the arbitrator's conduct was found to be within the entries enumerated under Fifth and Seventh Schedule of the Arbitration Act. In the instant case, the allegation of the award-debtor is bias and the award-debtor

submits that bias being an element of fraud, an unconditional stay of award is permitted within the meaning of Section 36(3) of the Arbitration Act. Admittedly, the allegations made in the instant case against the said learned Arbitrator is not within the meaning and purview of the entries under Fifth and Seventh Schedule of the Arbitration Act. Inasmuch as in the said judgment the Court came to an independent finding that non-disclosure would not be fraud. Hence, the ratio laid down in the said judgment has no application in the facts and circumstances of this case.

135. ***In the matter of: Gazal Taneja and Others (Supra)***, the judgment was rendered pertaining to usage of telephone connection where the principle under Order XLI Rule 5 of Code of Civil Procedure was applied. The said provision of Code of Civil Procedure though incorporated under Section 36(3) of the Arbitration Act in case of a money award but, the same is a directory provision and not mandatory. Insofar as an application under Section 36(2) of the Arbitration Act is concerned, it is the discretion of the Court. The law is settled that in the event of stay of a money award under the present Arbitration Act, the money is required to be secured. Therefore, unless, in the instant case, the Second proviso to Section 36(3) of the Arbitration Act is satisfied, there shall be no unconditional stay of the money award. The ratio in the said judgment is therefore, is not applicable in the facts and circumstances of this case.

136. ***In the matter of: Ranjit Thakur (Supra)***, the judgment was rendered not under the Arbitration Act but in respect of a disciplinary proceeding initiated under the Army Act, 1950. The decision-making process of the authority of the disciplinary proceeding was challenged by way of a writ petition on the

ground of bias. In the facts of the instant case, the parties by agreement have accepted the application of the Arbitration Act on the subject-matter. The plea taken by the award-debtor under Section 36(3) on the ground of bias of the said learned Arbitrator, on a plain reading of the statute is not available. The scope of adjudication where the decision-making process is challenged by way of a writ petition is totally different from the scope of adjudication when a decision-making process is challenged under the Arbitration Act. As already discussed above, the scope of enquiry under Section 36 of the Arbitration Act is extremely narrow in comparison with the scope of Section 34. Thus, the scope of adjudication in the instant case being different from an adjudication under Article 226 of the Constitution of India, the ratio laid down in the said judgment would not apply in the facts and circumstances of the instant case.

137. *In the matter of : Jagadish Krisinchand (Supra)*, the petitioner challenged the award primarily on the ground that opportunity of hearing was not granted to the petitioner in the arbitration proceeding and also alleged several other procedural latches on the part of the arbitral tribunal. The judgment was rendered under **Section 34** of the Arbitration Act. There the arbitrator acted as an arbitrator in another proceeding instituted at the instance of the respondent. It was held that the issue was covered within the ambit of the entries under Seventh Schedule of the Arbitration Act. The instant application has been filed under Section 36(2) and the plea has been taken under Section 36(3) of the Arbitration Act, where a detail enquiry is not permitted as is permitted under Section 34 of the Act. Inasmuch as, this is not an application neither any objection was taken by the award-debtor

under Section 12 of the Arbitration Act. Hence, the ratio of the said judgment shall not apply in the facts and circumstances of the instant case.

138. ***In the matter of: Metropolitan Properties Regina (Supra)***, the chairman of the rent assessment committee, who was the adjudicator, was a solicitor who advised the tenants and the landlord raised an objection of bias against the said adjudicator. Hence, the ratio laid down in the said judgment would not apply in the facts and circumstances of this case.

139. ***In the matter of: P D Dinakaran (Supra)***, the judgment was **not rendered in an arbitration case**. The respondent/judge in that case performed overt acts expressing opinion against the petitioner prior to the conduct of the judicial proceeding. Hence, the allegation of likelihood of bias was raised. In the instant case, no such case has been made out in the instant application filed by the award-debtor. Therefore, the ratio laid down in the said judgment would not apply in the facts and circumstances of the instant case.

140. ***In the matter of : A. K. Crypack (Supra)***, the judgment was rendered **not in an arbitration case**. In that case an allegation of bias was raised against a member of the selection committee who himself was a candidate for selection process. The principle is well established that a person cannot be a judge of his own cause. In the instant case, the allegation of the award-debtor is not the same or identical. The said arbitrator, in the instant case, was not a judge of his own cause. Hence, the ratio laid down in the said judgment would not apply in the facts and circumstances of the instant case.

141. ***In the matter of: State of Maharashtra (Supra)***, proceeding arose for a declaration that a charge-sheet was to be declared to be null and void and the charges were vitiated by fraud as panchanama was fabricated. No such case of fabrication is the subject-matter of the instant application. Therefore, the ratio decided in the said judgment would not apply in the facts and circumstances of the instant case.

142. ***In the matter of: Ramesh Sumermal Shah & Ors.(Supra)***, the challenge was in respect of an **interim award**. The scope of the proceeding is totally different from the proceeding under Section 36(2) of the Arbitration Act. Inasmuch as, there the Court found that the arbitral tribunal had failed to deal with the defense taken by the party concerned, which was considered to be a patent illegality in the impugned interim award. The impugned interim award was found to be perverse. The interim award was found to be without reasons. Hence, the Court was of the opinion that it was an exceptional, unique and compelling case for unconditional stay of the impugned interim award. Inasmuch as, under Section 36(2) along with the plea taken under Section 36(3) of the Arbitration Act, the scope of adjudication is very narrow and different from the scope of adjudication on an interim award. Therefore, the ratio decided in the said judgment would not apply in the facts and circumstances of the instant case.

143. ***In the matter of : M/s Vishnurupa Developers Pvt. Ltd. (Supra)***, in the said judgment the impugned award was passed rejecting the counter-claim of the petitioner in ignorance of the vital clause of the agreement between the parties/the subject work-order. Such is not the case here. The submissions made on behalf of the award-debtor/applicant that its counter-

claim has been rejected in a single sentence without any reasons is not within the scope of Section 36(2) of the Arbitration Act, the instant application. Hence, the ratio laid down in the said judgment would not apply in the facts and circumstances of the instant case.

144. ***In the matter of: Kanshi Ram (Supra)***, the matter arose out of a landlord tenant dispute under the **East Punjab Urban Rent Restriction Act**, claiming eviction. The ratio decided in the said judgment would not apply to come to a finding for a prima facie case under Section 36(2) on the plea of Section 36 (3) of the Arbitration Act, which is a special statute and has been agreed by and between the parties being the curial law. Court cannot go into the merits of the award at this stage.

145. ***In the matter of: Ecopark India Paper Cup Pvt. Ltd.(Supra)***, the challenge was from an **interim award** passed under Section 31(6) of the Arbitration Act and not from a final award. Inasmuch as, the said judgment was of 2018 prior to the 2021 amendment in the Arbitration Act, by virtue whereof, Section 36(3) has been engrafted in the Act. Therefore, the ratio laid down in the said judgment shall not apply in the facts and circumstances of the instant case.

146. ***In the matter of : Pam Developments (Supra) and Toyo Engineering (Supra)***, both the judgments were on applicability of principle under Order XLI of Code of Civil Procedure in relation with Section 36(3) of the Arbitration Act. The judgments were delivered pre 2021, before the amendment of the Arbitration Act was introduced. To exercise the discretion of the Court under the said directory provision of Order XLI of Code of Civil Procedure while adjudicating an application under Section 36(2) of the

Arbitration Act, the Court must find out a clear prima facie case within the statutory framework. The expression 'bias' is not there under Section 36 of the Arbitration Act. Detail enquiry which is otherwise permitted under Section 34 of the Arbitration Act is not permitted under Section 36(2) of the Arbitration Act. Therefore, there cannot be any mandate on a Section 36 Court to grant an unconditional stay of award in the facts and circumstances of every instant case. Thus, the ratio of the said judgment shall not apply in the facts and circumstances of the instant case.

147. ***In the matter of: Arup Mohanty & Anr. (Supra)***, the fact was incorrect recording in the minutes by the arbitrator and discovery of incorrect disclosure regarding arbitrator's connection with the respondent. The judgment was also delivered before 2021. Section 36(3) of the Arbitration Act had been introduced by virtue of the amendment of 2021 with retrospective effect from October 2015. In the facts of this case, though bias has not been included under Section 36(3) of the Arbitration Act but the applicant seeks to establish that fraud includes bias, within the meaning of Section 36(3) of the Arbitration Act. Within the limited scope of enquiry under Section 36 of the Arbitration Act, to draw such an inference is not permitted. Therefore, the ratio decided in the said judgment would not apply in the facts and circumstances of the instant case.

148. ***In the matter of : Bharat Heavy Electricals Ltd. (Supra)***, the constitutional validity of Section 13(3) and (4) of the Arbitration Act was challenged by way of a **writ petition**, which was dismissed. This was also a judgment of pre 2021 when the amendment in the Arbitration Act was not

there inserting Section 36(3). Thus, the ratio decided in the said judgment would not apply in the facts and circumstances of the instant case.

149. ***In the matter of : Himansu Shake (Supra)***, the judgment was rendered on the **Seventh Schedule** of this statute. Admittedly, bias has not been defined under any of the entry of the Seventh Schedule of the statute. To come to a conclusion on fraud within the meaning of Section 36(3) of the Arbitration Act whether it includes bias may call for a detail enquiry which is not permitted to be done by this Court under Section 36(2) of the Act. Hence, the ratio in the said judgment will not apply in the facts and circumstances of the instant case.

150. ***In the matter of: Lifestyle Equities C.V. & Anr. (Supra)***, the Hon'ble Supreme Court had held that in the event of an **exceptional case** having been made out, unconditional stay of award is permitted in exercise of power under Section 36(2) of the Arbitration Act. This is the settled law now. In the facts and circumstances of the instant case, it is therefore required to be examined in the light of the law laid down in the said judgment, whether any exceptional case is made out.

151. ***In the matter of: M/s Santi Ceramics Private Limited (Supra)***, the judgment was rendered in a **writ petition** and not in an arbitration case, the scope of adjudication within the meaning of Section 36(2) of the Arbitration Act, which is a special statute and codified law, is different from the jurisdictional authority of a constitutional court in judicial review under Article 226 of the Constitution of India. At Section 36(2) stage, this Court is not authorized to scrutinize the award with a deeper enquiry and whether the factors mentioned under Section 36(3) of the Arbitration Act exists, the

Court is only empowered to take a prima facie view and not beyond that. Whether the invocation of Arbitration clause by the award-holder was bad or whether the award-holder had no cause of action for arbitration in view of the ratio laid down in the said judgment is not to be looked at the present stage under Section 36(2) of the Arbitration Act. Therefore, the ratio laid down in the said judgment would not apply in the facts and circumstance of this case while adjudicating the instant application under Section 36(2) on the plea of Section 36(3) of the Arbitration Act.

152. ***In the matter of : WBSIDC (Supra)*** a Coordinate Bench of this Court had observed that fraud, as is commonly understood, has the potential to vitiate and undo all attendant and consequent happenings as a ripple-effect of unraveling the layers of cover and concealment of the truth. Fraud must be plain and indefensible on the face of the record so that the Court is not required to venture into the depths of the facts presented. The Court must be alarmed and taken aback, even at first blush, of the extent of deception and cunning. The act must be so flagrant so as to undo and upset the award on the egregiousness alone. Ultimately, on the existing facts and circumstances in that case, the Court did not find any prima facie view to hold fraud.

153. ***In the matter of : SRMB Srijan Ltd. (Supra)***, a Coordinate Bench of this Court was of the opinion that the inducement of the complaining party to enter into an arbitration agreement or the making of the award being tainted by fraud must be plain and ready to be discovered even without a detail enquiry into the facts. Fraud has to be spelt out and must be obvious to the eye at least for the purpose of unconditional stay of an award. Fraud must

also be reprehensible or unconscientious conduct with the active intention of deceiving another where the outcome of the award of the execution of an agreement when altogether have been different if fraud had been discovered. Finally, the prayer for unconditional stay of award was rejected.

154. ***In the matter of: C and E Ltd. (Components and Equipments Ltd.) and Another (Supra)*** the case was dealt with under **Section 12** of the Arbitration Act and the Coordinate Bench of this Court found that the conduct of the concerned arbitrator was covered under the entries made in **Fifth** and **Seventh schedule** read with explanation. In the facts of the instant case, there was no such proceeding under Section 12 of the Arbitration Act, though the documents and incidents spoken of on behalf of the applicant/award-debtor were available during the arbitration proceeding in the respective websites, which is a public domain. Thus, the ratio is not applicable in the facts of the instant case.
155. ***In the matter of : Satnam Singh (Supra)*** the Hon'ble Supreme Court had opined that any exception provided by way of a proviso to a Section cannot override the main Section, which has to be construed strictly.
156. ***In the matter of : Voestalpine Schienen (Supra)*** the Hon'ble Supreme Court had held that the Fifth schedule to the Arbitration Act is exhaustive.
157. ***In the matter of : Chennai Metro Rail (Supra)*** the Hon'ble Supreme Court had opined that the concept of *de jure* ineligibility because of existence of justifiable doubts about impartiality or independence of the tribunal and un-enumerated grounds other than those outlined as statutory ineligibility conditions in terms of Section 12(5), therefore, cannot be sustained.

158. ***In the matter of :Toyo Engineering Corporation (Supra), In the matter of :Manish (Supra) and In the matter of : WBSIDC (Supra)*** the Court had repeatedly held that for a money award unless a prima facie case is made out under sub-Section (3) to Section 36 of the Arbitration Act, the entire awarded sum has to be deposited to obtain stay of the award.

159. The order passed by the Hon'ble Supreme Court ***In the matter of : Mumbai Metro Rail Corporation Limited (Supra)*** is a discretionary order passed in the particular facts and circumstances of that case. First proviso to sub-Section (3) of Section 36 of the Arbitration Act provides that the Court, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of CPC. This borrowed provision is not mandatory but directory. The nature of security to be furnished and the strength of it would largely depend on the discretion of the Court. The Court must exercise such discretion judiciously. The law is well settled that the discretion if it is not arbitrarily exercised by the Court, the same sustains in the eye of law.

160. ***In the matter of : Bhadra International (India) Private Limited (Supra)*** the judgment was rendered in a **Section 34** proceeding. The law is settled that within the statutory framework as laid down under the Arbitration Act, the plea of ineligibility of an arbitrator under Section 12(5) of the Arbitration Act read with the Seventh Schedule shall not and cannot be waived unless there is a specific agreement in writing to that effect by the party. This is a statutory mandate and an exception to the provisions laid down under Section 4 of the Arbitration Act. If an arbitration is proceeded with and an

award is passed by the arbitral tribunal, if a party is aggrieved and alleged the ineligibility of the arbitral tribunal within the meaning of Section 12(5) read with the Seventh Schedule of the Act, such a party can agitate the issue in a Section 34 proceeding. However, the scope of adjudication in the instant application filed under Section 36 (2) of the Act is different from the scope of adjudication under Section 34 of the Act, as already discussed above. Thus, the ratio laid down in the said judgment shall not apply in the facts and circumstances of this case, at Section 36(2) stage.

161. There is a sea difference between the adjudication process when a constitutional Court exercises its high prerogative writ jurisdiction under Article 226 or 32 of the Constitution of India and an adjudication under the Arbitration Act. Both are legal remedies, but they operate in totally different universes. A writ remedy or a judicial review through a writ petition is a **constitutional remedy** whereas, **remedy** under arbitration is **contractual**. Sources of power and authority of Court are also different. To exercise the power and authority by a Court in a writ proceeding, the source is the constitution whereas, for arbitration proceeding it is the Arbitration Act which is otherwise a self-contained and complete Code. A writ court exercising its equitable jurisdiction is permitted to proceed on an inferred conclusion whereas an arbitration Court is not empowered to proceed on any inferred conclusion. Any person who are authorized to invoke writ jurisdiction can invoke it for violation of fundamental/legal rights by the State or any authority within the meaning of Article 12 of the Constitution of India. On the other hand, a party to a particular contract containing arbitration clause is entitled to invoke the jurisdiction under the Arbitration

Act alleging violation of contractual right under that particular contract. Writ remedy is a public law remedy guaranteed by the Constitution whereas, arbitration remedy lies before a tribunal which is derived from consent of parties/agreement between the parties. Eventually, when facts are disputed and several triable issues are there, writ Court refuses to exercise its discretion and jurisdiction. Whereas, arbitration permits a larger scope of enquiry on disputed questions of facts where issues are triable. Thus, the ratio laid down in the judgments in the writ petitions, as cited on behalf of the award-debtor, would not apply in the facts and circumstances of the instant case.

162. When an arbitration proceeding has been initiated and the parties by agreement have accepted to proceed under the Arbitration Act, the same should be within the statutory framework of the Arbitration Act. The adjudication in an arbitration proceeding has to be made within the four corners of the statute and in the manner and mode as specifically provided therein. The age old golden cardinal rule is that when a procedure and provision is prescribed in a particular statute, such procedure and provision has to be strictly applied and no other procedure or provision shall be applied in an adjudication process under a particular statute. All other modes are forbidden in law. When the award-debtor has made a prayer for unconditional stay of the award on the plea that the said learned arbitrator was *bias* and bias being an element of *fraud* and the ground is available under the Second proviso to Sub-Section (3) to Section 36 of the Arbitration Act for unconditional stay, the Court shall restrict its adjudication within the statutory framework of the Arbitration Act. It is noteworthy that the

expression *fraud* has not been defined or clarified under the Arbitration Act.

The expression *bias* is also nowhere defined under Section 36 of the Act.

163. **Fraud**, as in its plain meaning, is an act with the potential to vitiate and undo all subsequent incidents which had occurred as a result of practicing of fraud. Fraud unravels the layers of cover concealing of truth. Fraud must be and clearly should be apparent on the face of the record, so that the Court is not required to go for a deeper enquiry into the depth of the facts presented. The Court must be cautious on the basis of such record before it, even at first blush of the extent of deception. The act of fraud must be so egregious and glaring so as to undo and unsettle the award on the sole nature of egregiousness alone. In an arbitration proceeding, the scope of adjudication is such so that there cannot and should not be any inferred conclusion which is not there on the face of record. The conclusion in an arbitration proceeding, by an arbitration court, must and should arrive at within the statutory framework prescribed under the Arbitration Act and not on any inferred conclusion.

164. The allegations made by the award-debtor of bias against the said learned Arbitrator was on the basis of alleged seven incidents along with the supportive materials produced by the award-debtor, as already narrated above and are on records. Each of such incidents was allegedly there in existence during currency of the arbitration proceeding. It is also admitted by the award-debtor that the supportive materials in connection with those alleged seven incidents were available on the respective **websites**, which therefore, were available in the **public domain**. The specific case of the award-debtor is that after the arbitration proceeding was concluded, all

those alleged materials came to the knowledge of the award-debtor and the award-debtor had raised the issue of *bias* as an element of *fraud*, after it had come to know those alleged facts and raised the plea in Section 34 proceeding. The law is well settled that when the information and the supportive material is available in the **public domain**, it is known to everybody concerned/parties concerned. Therefore all such alleged seven incidents and the supportive materials were known and/or deemed to have been known to the award-debtor, still the award-debtor did not apply before the arbitral tribunal alleging fraud/bias against the learned arbitrator, before the arbitral tribunal within the prescribed statutory procedure. Had this application been filed by the award-debtor, the tribunal could have an opportunity to deal with the allegations against the tribunal.

165. Hon'ble Supreme Court ***In the matter of : Bhadra International (India) Private Limited (Supra)*** though a judgment delivered in a Section 34 proceeding, had observed that when an award has been passed by an ineligible arbitrator, the aggrieved party even though, not approached under Section 14 read with Section 15 of the Arbitration Act may approach the Court under Section 34 for setting aside of the award.

166. Second proviso to Sub-Section (3) to Section 36 requires the Court to be satisfied of a *prima facie* case of fraud. The expression *prima facie* contemplates a finding by the Court on fraud on the face of the record and on a first blush look on the record. *Prima facie* finding would not amount to hold a mini trial either to draw an inferred conclusion or to go deeper on the merits of the allegation. The facts on records show that during the currency of the arbitration proceeding, the alleged seven incidents talked about by the

award-debtor being in public domain were known to and/or deemed to have been known to the award-debtor, still the award-debtor did not apply within the statutory framework before the tribunal. This Court is of the firm and considered view that a meaningful reading of the provisions of Second proviso to sub-Section (3) to Section 36 of the Arbitration Act shows that a prima face opinion on fraud should be arrived at by the Court within the prescribed statutory procedure under the Arbitration Act and not by any inferred conclusion. This Court has not found any **prima facie** case of **fraud** during its enquiry within the scope of Section 36(3) of the Arbitration Act.

167. *In the matter of : Lifestyle Equities C.V. (Supra)* the Hon'ble Supreme Court had held that even if the Court finds an **exceptional case**, the Court may unconditionally stay the operation of the award.

168. Considering the facts and circumstances of the instant case and the materials before this Court and more so the glaring fact that all those alleged seven incidents with all supportive materials as alleged being there in the public domain during currency of the arbitration proceeding and still the award-debtor did not apply before the arbitral tribunal within the statutory framework to which it was entitled to, this Court is of the considered view that there is **no exceptional case** for which this Court can stay the award impugned unconditionally. Inasmuch as, the applicant/award-debtor could not furnish an unimpeachable evidence on record which on a first blush shows that all those alleged seven events where the learned Arbitrator allegedly attended, were arranged and organized by the award-holder. Furthermore, the plea of the award-debtor regarding that alleged rejection of counter-claim of the award-debtor by a

single sentence without any reason or allowing the claim of the award-holder without appreciating the evidence on record or without being proved or without any reason, can only be adjudicated in the pending Section 34 proceeding and not in this proceeding under Section 36 of the Act. Thus, no **exceptional case** has also been found for unconditional stay of the award, on this score.

169. In view of the foregoing discussions and reasons, this Court holds that there is **no prima facie case** made out to arrive at a finding of **fraud** as alleged by the award-debtor within the meaning and scope of the Second proviso to sub-Section (3) to Section 36 of the Arbitration Act. This Court is also of the firm and considered view and holds that there is **no exceptional case** for which the impugned award can be stayed unconditionally.

170. It is also noteworthy that the First proviso to sub-Section (3) to Section 36 of the Arbitration Act, inter alia, provides that upon filing an application under Section 36(2) of the Act for stay of operation of arbitral award, the Court may subject to such condition as it may deem fit, grants stay of operation of such award for reasons to be recorded in writing and further provides that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, having due regard to the provisions for grant of stay of a money decree under the provisions of Code of Civil Procedure. Rule 5 to Order XLI of Code of Civil Procedure does not specify about the mode, manner, form or nature of security and reading of the said provisions shows it is left with the discretion of the Court. Use of discretion by the Court depends on facts of each case and there cannot be any common theory or formula for it.

171. ***In the matter of : Mumbai Metro Rail Corporation Limited (Supra)*** the appellant at whose instance the order was passed by the Hon'ble Supreme Court on December 01, 2025 was a Government Company where State was a stakeholder. In the instant case, the award-debtor/applicant is also a Government company where State is a stakeholder.

172. Accordingly, for **stay** of the **award** dated **October 30, 2023**, the following terms and conditions are imposed on the **award-debtor**, which are:

- (a) After calculating the entire principal and interest amount under the impugned award **as on today** subject to the satisfaction of the Registrar, Original Side, the applicant/award-debtor is directed to furnish an **undertaking** by way of an **affidavit** through its **managing director** or **chairman**, as the case may be, with the supportive **current board resolution** in accordance with law along with particular/particulars of the immovable property/properties owned by it in the city of Kolkata and elsewhere, in the event of necessity to cover the **entire awarded sum**, which is/are **free from any encumbrances** with copies of the supportive title deeds/documents. The undertaking **shall** expressly recite that in the event of arbitral award attained finality, the applicant/award-debtor shall pay the entire awarded amount both **principal and interest** positively within a period of **eight weeks** from date of finality of award. The undertaking in the form of an affidavit shall also contain a chart containing the description of the property/properties which shall be the subject-matter of the undertaking.

- (b) Such undertaking in the form of an affidavit should be filed by the applicant/award-debtor positively within a period of **eight weeks** from date before the Registrar, Original Side. The Registrar, Original Side then shall prepare a report and keep the report in the original file of Section 34 application.
- (c) In the event, it is found that the security in the form of immovable property/properties is not sufficient to cover the entire awarded sum or any part thereof, then in that event the award-debtor/applicant, to that extent shall furnish **cash security** to secure the said excess awarded amount within said period of **eight weeks** with the Registrar, Original Side.
- (d) In the event, the entire awarded amount both principal and interest together is not possible to be secured by the award-debtor by furnishing the undertaking by immovable property/properties, as directed herein, in that event, the entire awarded amount shall be secured by way of **cash deposit** to be deposited by the award-debtor within the said period of **eight weeks**, directed hereinabove.
- (e) On receipt of any amount, the Registrar, Original Side shall keep the said sum in an interest bearing fixed deposit with the **State Bank of India, SPG Branch** under the auto renewal mode and prepare a report and keep the same in the original file of Section 34 application.
- (f) There shall be an **unconditional stay** of the impugned award till **eight weeks** from date. Thereafter, if the undertaking is not filed before the Registrar, Original Side or the cash security is not

deposited as the case may be, as directed herein, within the said period of **eight weeks**, the **stay** will **automatically** be **vacated**.

173. With the above observations and findings the instant application being **AP-COM 88 of 2024** stands **dismissed** with cost assessed at **Rs.50,000/-** to be paid by the applicant/award-debtor in favour of **West Bengal State Legal Services Authority** positively within a period of **four weeks from date** by way of a **banker's instrument**.

(Aniruddha Roy, J.)

D.Das,(P.A).