

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

APOT/32/2026

IA No. GA-COM/1/2026

TAPAS KUMAR DAS

-Vs-

INDIAN OIL CORPORATION LIMITED

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Samit Talukdar, Sr. Adv.
Mr. Debajyoti Datta, Adv.
Mr. Subhasis Bandopadhyay, Adv.

For the Respondent : Mr. Jishnu Saha, Sr. Adv.
Mr. Manwendra Singh Yadav, Adv.
Ms. Saswati Chatterjee, Adv.

HEARD ON : 01.04.2026

DELIVERED ON : 01.04.2026

DEBANGSU BASAK, J.:-

1. Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against the judgment and order dated December 23, 2025 passed in AP-COM/160/2024.
2. By the impugned judgment and order, learned Single Judge allowed the application under Section 34 of the Act of 1996 filed by the respondent challenging an award dated July 30, 2018.

- 3.** Learned senior advocate appearing for the appellant submits that, learned Single Judge erred in setting aside the award and allowing the application under Section 34 of the Act of 1996. He submits that, the award did not suffer from any illegality nor did it violate any fundamental policy of India. It was within the jurisdiction of the learned arbitrator to err in fact and in law. The award cannot be classified as non-speaking or perverse. Learned Arbitrator evaluated the evidence placed and passed an award providing reasons for the findings returned.
- 4.** Learned Senior Advocate appearing for the appellant submits that, the appellant was engaged as a dealer by the respondent. The dealership agreement was terminated on the allegation of the appellant allegedly indulging in adulteration. He submits that, two tests were done of one sample taken. Sample taken was in violation of the law applicable. In any event, the test was done in absence of the appellant. He refers to the finding of the learned Arbitrator in this regard. He submits that, in so far as the first test is concerned, the same was done in breach of the principles of natural justice. The report of the second test was not adverse to the respondent. Secondly, he submits that, the arbitral tribunal was right in holding that the termination of the contract was bad.
- 5.** Learned Senior Advocate appearing for the appellant submits that, once the arbitral tribunal returned a finding that the termination was bad, then, the contract revives. In addition thereto, the Arbitrator was entitled to award compensation for the damages suffered by reason of the wrongful termination of the contract. He

contends that, the learned Arbitrator, therefore, proceeded to assess the damages and rightly awarded the same.

- 6.** Learned Senior Advocate appearing for the respondent submits that, the sampling was done in accordance with law. The arbitral Tribunal proceeded on the basis of the breach of constitutional provisions while the arbitral Tribunal was adjudicating between the two parties purely on the basis of a commercial contract. He submits that, the impugned award suffers from patent illegality and tantamount to re-writing the contract. He submits that, the contract between the parties did not permit reinstatement of the dealership agreement which, according to him, was validly terminated. Therefore, he submits that, no interference is called for in the present appeal.
- 7.** Parties entered into a dealership agreement dated March 8, 2004. By such agreement the appellant was appointed as the distributor to run a retail outlet at village-Kanchanpur, Jalpai, NH-41 in the district of Purba Medinipur for operating a petrol pump under the name and style of M/s. Mahisadal Filling Station.
- 8.** The outlet of the appellant was inspected by a Joint Industry Team on February 9, 2011. Samples of the products sold at the outlet of the appellant were taken. On test, conducted thereon, such samples did not meet the prescribed specification. Finding of such inspection was recorded in the inspection report dated February 9, 2011.
- 9.** By a writing dated February 24, 2011, the appellant was called upon to show cause as to why action should not be taken against

him in terms of the Marketing Discipline Guidelines, 2005. It is admitted at the Bar that Marketing Discipline Guidelines, 2005 applies to the contract between the parties.

- 10.** A further show cause notice was issued to the appellant on July 18, 2011 calling upon the appellant to show cause as to why the dealership agreement should not be terminated for violation of the essential terms and conditions, malpractice and criminal acts including tampering of seals of the sample containers.
- 11.** Appellant invoked the arbitration clause in the contract at this stage. A first round of arbitration took place. Arbitrator in the first round passed an award dated August 30, 2012 which was set aside. Thereafter, on an application under Section 11 of the Act of 1996, the Arbitrator which passed the award dated July 30, 2018 was appointed.
- 12.** By the award dated July 30, 2018, learned Arbitrator held the termination to be bad in law, directed restoration of the dealership, and, awarded damages.
- 13.** On the score of restoration of dealership, learned Trial Judge found that, the learned Arbitrator disregarded the terms of the dealership agreement and the established law on the subject. Learned Single Judge held that, the learned Arbitrator acted contrary to clause (3) of the dealership agreement which permits the agreement to be terminated at the option of the parties even without any event of default occurring. Learned Single Judge referred to Sections 14 and 16 of the Specific Relief Act, 1963 in this regard.

- 14.** Learned Single Judge also noted that, learned Arbitrator embarked upon a discussion as to the applicability of Constitutional provisions as, the respondent is an authority within the meaning of Article 12 of the Constitution of India. Learned Single Judge held that the contract between the parties was voluntarily undertaken and that there was no scope to enter into the arena of infringement of constitutional right as done by the learned Arbitrator.
- 15.** So far as the claim on account of damages is concerned, learned Single Judge held that, the damages was awarded without any evidence in support of the proof thereof. Learned Single Judge held that, claim on account of damages cannot be awarded without any proof of the same.
- 16.** Our scope of enquiry under Section 37 of the Act of 1996 is circumscribed by the parameters under Section 34 thereof. We are to evaluate whether or not learned Single Judge applied the parameters enshrined under Section 34 of the Act of 1996 in assessing the award impugned before it. In the facts and circumstances of the present case, leaned Single Judge correctly found that, the learned Arbitrator was guilty of re-writing the contract between the parties arriving at a decision which can be termed to be patent illegality and contrary to the established principles of law. These parameters are well established principles for setting aside an award under Section 34 of the Act of 1996 if the award falls foul of the same.

- 17.** In view of the discussion above, we do not find any ground to interfere with the impugned judgment and order.
- 18.** Accordingly, APOT/32/2026 along with the connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

- 19.** I agree

(MD. SHABBAR RASHIDI, J.)