

OD-2

APOT/81/2026
IA NO: GA/1/2026
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

JAISWAL IRON AND STEEL COMPANY AND ORS
VS
BOARD OF TRUSTEES FOR SYAMA PRASAD
MOOKERJEE PORT OF KOLKATA AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date: 20th May, 2026.

Appearance:
Ms. Sutapa Sanyal, Adv.
Mr. Triptimoy Talukder, Adv.
Mr. Diptomoy Talukder, Adv.
Mr. Abir Bhattacharya, Adv.
Mr. Abhiraj Tarafdar, Adv.
. . .for the appellant.

Mr. Dhiraj Trivedi, Adv.
Mr. Ashok Kr. Jena, Adv.
. . .for the respondents.

The Court: The appeal arises out of an order dated April 6, 2026, passed by a learned Single Judge in WPO No. 1578 of 2026. An order passed by the respondent Nos. 1 and 2 dated August 19, 2025 was challenged in the writ petition. The authorities forfeited the entire sale value deposited by the appellant No. 1 and the said appellant was debarred from participating in future tender/auction for a period of two years.

The appellant No. 1 was the successful tenderer in respect of a notice inviting tender, floated by the Syama Prasad Mookerjee Port, Kolkata (hereinafter referred to as the Port). The authorities of the Port had conducted an e-auction for sale of one number of condemned Pontoon lying at Takta Ghat and two numbers of Condemned Pontoons lying at Qutram Jetty-2 on November 29, 2023. The appellant no.1 deposited the entire sale consideration with applicable taxes aggregating to Rs. 51,33,001/-. Delivery Order and Block Gate pass were issued on January 11, 2024.

It was urged before the learned single Judge by the learned advocate for the appellant no.1 that as the daily gate pass was not issued, delay occurred. Although, labourers were mobilized for transportation of the Pontoons, the request of the appellant no.1 to treat the Block gate pass as the daily gate pass was not accepted.

The authorities allegedly, allowed the appellants to proceed with the cutting of the portions without any clearance from the Port's Fire Services. On February 6, 2024, the Assistant Mooring Master stopped the work without any notice. On the same day the appellants applied for waiver of Clause -2 of the delivery order dated January 11, 2024, but no reply was received.

Ms. Sanyal learned advocate for the appellant submits that the appellants were not allowed to continue with the work on and from February 6, 2024 and despite several letters and reminders for waiver of the second clause of the delivery order, the authorities remained silent. The appellants' were waiting for a positive action in this regard from the end of the Port authorities,

but no communication was received. The appellants had an expectation that the clause would be waived and they could resume the cutting work. The appellants, therefore, could not carry on with the work. Suddenly, a show cause notice was issued by the Port authorities on May 6, 2024, after the free delivery period was over and five months after the date of issuance of the Block Gate pass. According to learned Advocate, the show cause notice was belated and did not contain proper facts. The allegations lacked foundational basis. A reply was filed to the show cause notice, denying the allegations. Finally, a decision to forfeit the entire sale value was taken by the authorities. The appellant No. 1 was also blacklisted. When the Port authorities decided to go for a re-tender, the writ petition was filed challenging the forfeiture of the entire sale value and the order of blacklisting. The learned Judge came to a finding that the decision to black list the appellant No. 1 was contrary to law, as a proper notice proposing such blacklisting had not been issued. This action was violative of the principle of natural justice. With regard to the allegation of wrongful forfeiture of the sale value, His Lordship assessed the factual aspects and decided that the forfeiture of the sale value should not be interfered with.

Ms. Sanyal submits that the decision to forfeit the sale value was not in accordance with the terms and conditions of the tender document and the delivery order. The forfeiture was nothing, but unjust enrichment, on the part of the public authority. The laches and negligence on the part of the Port authorities resulted in non-performance of the work. Reliance has been placed on the decision of Subhash Aggarwal Vs. Mahender Pal Chhabra and Anr.

reported in 2026 SCC Online SC 1. It was submitted that the decision suffered from unreasonableness.

Mr. Trivedi, learned DSGI submits that the Port authorities could never allow waiver of the obligation to obtain a fire licence. No part of the notice inviting tender could be altered by the authorities. Thus, the first contention of Ms. Sanyal that the appellants are waiting for a positive step from the Port authorities to waive Clause 2 of the delivery order, is unsustainable. The show cause notice was issued on May 6, 2024. The answer to the same was issued by the appellant. The decision of forfeiture was issued on August, 2025, but the same was not challenged by the appellant for a considerable time. When the e-tender was sought to be floated sometime in April 2026, the writ petition was filed only to stall the process.

We have heard the learned advocates for the respective parties. His Lordship dealt with the facts in detail. Admittedly, the appellants had not removed the materials within the delivery period. The ground taken by the appellants for not taking out the materials within the delivery period was that, the daily gate pass was not provided. This was not accepted by His Lordship.

The fact remains that the clearance from the Fire-services had not been obtained. A show cause notice was issued on May 6, 2024, wherein non-compliances by the appellants were indicated. There were also allegations that the appellants had started to take away the materials without a daily gate pass. Further, according to the authorities, the applicant had unauthorizedly resorted to stacking gas cylinders, after trespassing into the Port's premises,

for cutting the pontoons at Outram Jetty II, without permission from the Port authorities.

Although Ms. Sanyal submits that the forfeiture clause could be imported by the authorities under very exceptional circumstances, His Lordship found that there was nothing on record which would indicate that the Port authorities had actually violated the terms and conditions of the contract. There is also no clause in the tender document, permitting refund of the proportionate sale value of unremoved lot. Thus, the issue of unjust enrichment cannot be decided in this proceeding. According to His Lordship, the only reason for filing the writ petition was to stall the second e-tender process.

A show cause notice was issued before the decision to forfeit the sale value had been taken. The appellants filed their reply. The allegations were in the nature of breaches committed by the appellants. Those were controverted by the appellants by filing a reply. We find from the nature of allegations and the answers given thereto, that factual disputes emerge, which cannot be decided either by the Writ Court or by us in an intra court appeal. The relationship between the parties are contractual in nature. The disputes arose out of a commercial transaction. Such disputed questions have to be decided on evidence, which is beyond the purview of the writ court. The contract provides for adjudication of the dispute by arbitration. Thus, the appellants are at liberty to invoke arbitration in accordance with law.

Interpretation of the clauses in the contract are within the domain of an arbitrator.

The appellants will be at liberty to seek interim protection before the learned Arbitrator or before the appropriate forum. The appeal and application are disposed of without any interference. All points are left open, to be decided by the proper forum. The findings of the learned Judge and this court are restricted to the disposal of the writ petition and the appeal and not beyond.

The appellants are at liberty to approach the Port authorities for resolution through mediation.

(SHAMPA SARKAR, J.)

(AJAY KUMAR GUPTA, J.)

sp/b.pal./tr