

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

**APO/41/2022
WITH
EC/156/2020**

**BHARAT HEAVY ELECTRICALS LTD ELECTRONICS DIV.
VS
OPTIMAL POWER SYNERGY INDIA PVT LTD**

AND

**APO/85/2023
WITH
AP/175/2020**

**BHARAT HEAVY ELECTRICALS LIMITED ELECTRONICS DIVISION
VS
OPTIMAL POWER SYNERGY INDIA PVT LTD.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Jishnu Saha, Sr. Adv.
Mr. Tauseef Ahmed, Adv.
Mr. Arindam Paul, Adv.
Ms. Debarati Das, Adv.

For the Respondent : Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Ganesh Prasad Shaw, Adv.
Mr. Rohit Mukherji, Adv.

HEARD ON : 08.05.2026
DELIVERED ON : 13.05.2026

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for hearing analogously as the issues involved are same.
2. Appeal is under Section 37 of the Arbitration and Conciliation Act, 1996 and directed against the judgment and order dated May 23, 2022.
3. Learned Senior Advocate appearing for the appellant submits that, the subject matter of the disputes referred to arbitration which culminated into the award dated September 24, 2019 and the application under Section 34 of the Act of 1996 which resulted in the impugned judgment and order, is a commercial dispute within the meaning of the Commercial Courts Act, 2015. He submits that, the impugned judgment and order was passed by a Court when, such Court was not designated as a Commercial Division, under Section 4(2) of the Act of 2015.
4. Learned Senior Advocate appearing for the appellant relies upon a decision dated January 29, 2026 passed in **APO/93/2020 (State of West Bengal Vs. Pam Development Pvt. Ltd.), 2026:CHC-OS:15-DB (Tractel Tirfor India Pvt. Ltd. Vs. Tractel International S.A.S)** and **2026:CHC-OS:120-DB (Starlift Services Private Limited Vs. Syama Prasad Mookerjee Port, Kolkata)** and submits that, in view of the pronouncement therein, since, the impugned judgment and order was passed by a Court

which was not designated Court under Section 4(2) of the Act of 2015, the impugned judgment and order is without jurisdiction and therefore, a nullity.

5. Learned Senior Advocate appearing for the appellant refers to **Tractel Tirfor India Pvt. Ltd. (supra)** and in particular to a decision of the Supreme Court reported at **2025 SCC Online SC 582 (Garden Reach Shipbuilders and Engineers Limited Vs. GRSE Limited Workmens Union)** and submits that, since, the learned Judge passed the impugned judgment and order was without requisite determination, the same is required to be treated as a nullity.
6. Learned Senior Advocate appearing for the appellant draws the attention of the Court to the order dated April 22, 2026 passed in **Civil Appeal No. 006873 of 2026 [SLP (C) No. 8111 of 2026] (Shri Balaji Industrial Engineering Ltd. Vs. Steel Authority of India Ltd.)** and submits that, **Garden Reach Shipbuilders and Engineers Limited (supra)** was noted therein. He submits that, even on the strength of **Shri Balaji Industrial Engineering Ltd. (supra)**, the impugned judgment and order cannot be sustained.
7. Learned Senior Advocate appearing for the appellant submits that, the application under Section 34 of the Act of 1996 along with the execution petition were assigned to the learned Single Judge by the Hon'ble The Chief Justice on February 7, 2022. On such date, the learned Judge, was not designated under Section 4(2) of the

Act of 2015 to discharge duties as a Commercial Division under the Act of 2015.

- 8.** Learned Senior Advocate appearing for the respondent submits that, the application under Section 34 of the Act of 1996 was pending before the Court which was designated as a Commercial Division under Section 4(2) of the Act of 2015. The learned Judge, released the proceeding on December 6, 2021, since, a review petition against an order dated September 1, 2021 was pending before the Co-ordinate Bench. It is on that premise that, the application under Section 34 of the Act of 1996 was released by the Court which was designated as the Commercial Court under Section 4(2) of the Act of 2015 on December 6, 2021. He submits that, by virtue of the assignment, it should be construed that, the Court which passed the impugned judgment and order, was with the requisite jurisdiction to do so.
- 9.** Attention of the learned counsel of both the parties was drawn by us, to the Notification bearing No. 7438-RG dated November 11, 2025 issued by the High Court and printed in the cause list of the Original Side. Request was made to the learned counsel for the parties, to assist the Court as to the effect of such notification in the facts and circumstances of the present appeal.
- 10.** Learned Senior Advocate appearing for the appellant submits that, the Notification dated November 11, 2025 does not assist the respondent, since, such notification is subsequent to the order of

assignment on February 2, 2022. He submits that the notification should not be construed to be of retrospective effect as it does not specify itself to be so. Therefore, on the date of assignment, as also on the date of the impugned judgment and order since, the Court passing the impugned judgment and order was not a designated Court under Section 4(2) of the Act of 2015, the impugned judgment and order should be held to be a nullity.

- 11.** Learned Senior Advocate appearing for the appellant submits that, the Notification dated November 11, 2025 cannot aid the respondent since, on the date of the impugned judgment and order, the learned Judge was not a Court designated under Section 4(2) of the Act of 2015.
- 12.** Disputes, *inter se*, between the parties relating to sale of goods and services were referred to the Facilitation Council under the provisions of Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Such Facilitation Council passed an award dated September 24, 2019. Being aggrieved by such award, the appellant assailed the same under Section 34 of the Act of 1996 being AP/175/2020.
- 13.** Commercial Division of the High Court was constituted by the Notification dated July 16, 2016. Specified Value as defined in Section 2(1)(i) and read with Section 15 of the Act of 2015 was initially not less than Rs. 1 crore and subsequently not less than Rs. 10 lakhs for this High Court.

- 14.** The challenge under Section 34 of the Act of 1996 was filed in the Non-commercial Division. The value of the award under challenge is more than Rs. 2 Crores on the date of filing of the challenge of the award. Filing of the challenge in the non-commercial division was incorrect. None of the parties took any steps to convert the proceedings under the Act of 1996 to the Commercial Division. The Department also did not transfer the proceedings to the Commercial Division.
- 15.** The challenge petition being AP/175/2020 was taken up by a learned Single Judge on January 20, 2022. Learned Single Judge noted that, a review petition was pending before a Co-ordinate Bench and therefore, released AP/175/2020.
- 16.** Execution petition filed to implement the award being EC/156/2020 was also released by the learned Single Judge on December 6, 2021 after noticing that, a connected review petition was pending before the Co-ordinate Bench.
- 17.** Both these proceedings were placed before the Hon'ble the Chief Justice on February 7, 2022 when, His Lordships was pleased to assign both the matters to a learned Single Judge.
- 18.** Assignment occurred on February 2, 2022. On such date, the learned Single Judge to whom both the proceedings were assigned was not the Court designated under Section 4(2) of the Act of 2015. On the date, when, the impugned judgment and order was

passed, the learned Single Judge was not the Court designated under Section 4(2) of the Act of 2015.

19. Issue as to the validity of a judgment and order passed by a Court in the Non-commercial Division, in respect of disputes involving commercial disputes within the meaning of the Act of 2015 was considered by us in **Pam Development Pvt. Ltd. (supra)**, **Starlift Services Private Limited (supra)** and **Tractel Tirfor India Pvt. Ltd. (supra)**. There is, however, a pronouncement of the Hon'ble Supreme Court in **Shri Balaji Industrial Engineering Ltd. (supra)**, where the Hon'ble Supreme Court is of the view that, if a judge, is designated under Section 4(2) of the Act of 2015, then notwithstanding a proceeding involving a commercial dispute within the meaning of the Act of 2015 is disposed of by such learned Judge, in the Non-commercial Division, the same cannot be termed as a nullity. It is also of the view that, in the event, a judgment and order is passed without determination, then the same is to be treated as a nullity.
20. In the facts and circumstances of the present case, the challenge petition being AP/175/2020 could not be filed in the non-Commercial Division. On the date, when, the assignment took place as also on the date when, the impugned judgment and order was passed, the learned Judge was not a Court designated under Section 4(2) of the Act of 2015. However, the matters were assigned to the learned Judge.

- 21.** In our understanding, **Shri Balaji Industrial Engineering Ltd. (supra)** does not permit a decision to be rendered by a Court not designated under Section 4(2) of the Act of 2015 in respect of a commercial dispute in the Non-commercial Division. It does not clothe legality to a decision rendered in matter involving a commercial dispute, by a Court which is not a designated Court under Section 4(2) of the Act of 2015 when, such decision was rendered.
- 22.** The Notification dated November 11, 2015 of the High Court, also does not aid the respondent. Such notification was issued subsequent to the impugned judgment and order was passed. On the date of the assignment as also on the date of the impugned judgment and order, the learned Judge, was not a Court designated under Section 4(2) of the Act of 2015.
- 23.** We initially delivered a judgment in Court on May 8, 2026. However, while correcting such judgment, we thought it prudent that we should seek clarification from the parties with regard to the specified value of the subject matter of the disputes. Consequently, we placed the matters in the list on May 12, 2026.
- 24.** The matters were adjourned on May 12, 2026 in order to facilitate the learned counsel for the parties to assist the Court on the point raised.
- 25.** Twin conditions must concurrently exist for a pending proceeding to be dealt with under Section 15 of the Act of 2015. First

condition is that the subject must involve a commercial dispute within the meaning of the Act of 2015. The other is that the valuation of the subject matter of the Specified Value. Both must exist concurrently.

26. The bone of contention is the specified value of the subject matter.

It appears from the records that, the claim before the Facilitation Council was in excess of Rs.1 crore. The principal amount awarded together with the interest awarded, will exceed the sum of Rs.1 crore. The relevant notification governing the pecuniary jurisdiction of the Commercial Division, when, the proceedings were filed is dated November 15, 2018 which prescribed a sum of Rs.1 crore as the specified value.

27. In such circumstances, we are constrained to hold that the impugned judgment and order was passed by a Court, which did not possess requisite jurisdiction to do so, and hence, a nullity.

28. We clarify that we did not enter into the merits of the present case.

29. The impugned judgment and order dated May 23, 2022 is set aside.

30. Since, presently the pecuniary jurisdiction of the Commercial Division is above Rs. 10 lakhs, on setting aside of the impugned judgment and order, we are required to remand the matters to the learned Court for fresh adjudication. As noted above, since, present pecuniary jurisdiction of the Commercial Division is above

Rs.10 lakhs, we deem it appropriate to issue directions under Section 15 (5) of the Act of 2015.

- 31.** Since, AP/175/2020 and EC/156/2020 involve commercial disputes within the meaning of the Act of 2015, Department will transmit the records of the AP/175/2020 and EC/156/2020 along with all connected applications pending in respect of those two proceedings to the Commercial Division. Immediately on transmission, the Non-commercial Division will treat AP/175/2020 and EC/156/2020 along with all connected applications as disposed of so far as such Non-commercial Division is concerned.
- 32.** Learned Senior Advocate appearing for the respondent draws the attention of the Court to Section 19 of the Act of 2006. He submits that, since, the bank guarantee furnished by the appellant stood lapsed, the proceedings under Section 34 of the Act of 1996 is no longer valid. The same, therefore, need not be transmitted to the Commercial Division.
- 33.** Learned Senior Advocate appearing for the appellant submits that, when, the application under Section 34 of the Act of 1996 being AP/175/2020 was presented, 50% of the award amount was secured by deposit of cash with the Registrar, Original Side and the balance was secured by way of a bank guarantee. He submits that, this bank guarantee lapsed due to sheer oversight. He seeks time to extend such bank guarantee.

- 34.** We find from the records that, there was compliance with the provisions of Section 19 of the Act of 2006 for a substantial period of time. However, as on date, the bank guarantee stands lapsed.
- 35.** In our view, interest of justice would be subserved by permitting the appellant to renew the lapsed bank guarantee within 7 days from date or file fresh bank guarantee. In the event of default in doing so, the order requiring transmission of the records from the Non-commercial Division to the Commercial Division shall stand vacated without further reference to the Court. In such eventuality, the Department will treat AP/175/2020 as dismissed.
- 36.** APO/41/2022 and APO/85/2023 are disposed of accordingly.

(DEBANGSU BASAK, J.)

- 37.** I agree.

(MD. SHABBAR RASHIDI, J.)