A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30590 of 2025

(In the matterof a petition under Articles 226 and 227 of the Constitution of India, 1950).

Union of India, General Manager, East Coast Railway, Bhubaneswar	**....**	***Petitioner (s)***

-versus-

M/s. Rashmi Metaliks Ltd.	**....**	***Opp. Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s)	*:*	*Mr. N. Venkatraman, ASGI* *Mr. Prasanna Kumar Parhi, DSGI* *Mr. B. Maharana, Sr. P.C.* *Mr. S.S. Kashyap Sr. P.C.*
For Opp. Party (s)	*:*	*Mr. Kiran Dutta, Adv.* *Mr. Alok Ranjan Mohanty, Adv.*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-08.01.2026
DATE OF JUDGMENT:-30.01.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present Writ Petition has been filed under Articles 226 and 227 of the Constitution of India calling in question the order dated 02.09.2025 passed by the learned Senior Civil Judge (Commercial Court), Bhubaneswar, in Arbitration Petition No.9 of 2024. By the impugned order, the learned Commercial Court disposed of the Petitioner's application filed under Section 36 of the Arbitration and Conciliation Act, 1996, and while granting a stay of operation of the arbitral award dated 08.11.2023, made the same conditional upon deposit of 100% of the awarded amount. The Petitioner assails the said order to the extent it imposes such onerous and unconditional pre-deposit as a prerequisite for stay, contending that the condition is excessive, disproportionate, and not in consonance with the settled principles governing exercise of discretion under Section 36 of the Act

I. FACTUAL MATRIX OF THE CASE

2. The record discloses that, in terms of the Railway Board letter dated 12.03.2007, Rashmi Metalliks Limited was accorded approval to procure 305 BOXN-HS wagons, constituting five rakes, under the Wagon Investment Scheme, 2005. The permission was granted subject to the applicable railway tariff and the conditions governing private sidings, with the notified and exclusive loading point specified as Nayagarh Private Siding for operational purposes. Pursuant thereto, a Wagon Investment Scheme Agreement dated 30.5.2007 was executed between East Coast Railway and Rashmi Metallicks Limited. Under the said agreement, the Railways were to supply six guaranteed rakes per month per invested rake, subject to placement of indent, with 10% freight rebate, for a contractual period of ten years, and ownership of wagons was to transfer to Railways after expiry of ten years from induction. The loading and unloading points were specified within East Coast Railway jurisdiction. The agreement contemplated construction of Nayagarh Private Siding as the approved loading point.

3. The agreement dated 30.05.2007 constitutes the foundational contractual instrument between the parties, from which all subsequent arrangements, understandings, and transactions emanated, as is evident from the pleadings, affidavits, annexures, and comparative statements forming part of the present record.

4. It is an admitted position in the pleadings that the Nayagarh Private Siding was never constructed by Rashmi Metaliks Limited, which was the approved loading point under the Agreement dated **30.5.2007**. Despite non-construction, the five rakes were inducted into Indian Railways' operational fleet on 5.8.2008, 6.8.2008, 9.5.2009, and 16.6.2010.

5. Three rakes were delivered to East Coast Railway on 5.8.2008, 6.8.2008, and 9.5.2009, and the remaining two rakes were delivered on 16.6.2010. During this period, limited temporary permissions were granted to operate from Nayagarh Goods Shed, and only 16 rakes were loaded in 2009.

6. As the approved private siding was not available for operational use, the Opposite Party sought for a change in the designated loading points, which necessitated administrative approvals and contractual adjustments. Consequent thereto, the territorial jurisdiction and operational control of the concerned rakes stood transferred from the East Coast Railway to the South Eastern Railway, as evidenced by the subsequent agreements, correspondences, and orders forming part of the record.

7. In furtherance of the aforesaid arrangements, a Supplementary Agreement dated 15.06.2009 was executed, whereby the first and second rakes were transferred from the administrative control of the East Coast Railway to that of the South Eastern Railway, with the notified loading point at Banspani Goods Shed and the unloading points at Vizag Port and Gangavaram Port. Thereafter, pursuant to an interim order dated 05.12.2017 passed in W.P. No. 23030 of 2017 by the Calcutta High Court, a Tripartite Agreement dated 25.01.2018 was entered into, under the said agreement the remaining three rakes were also transferred to the South Eastern Railway, with revised loading points at Barajamda–Barbil and revised unloading points at Nimpura, Jhargram, and Gokulpur, as reflected in the record..

8. The supplementary agreements neither contemplated induction of additional rakes nor did it provide for commencement of a fresh contractual tenure of ten years. The accrual and continuance of contractual benefits remained expressly referable to the original dates of induction under the East Coast Railway, thereby evidencing an uninterrupted continuity of the foundational Agreement dated 30.05.2007.

9. Disputes arose between the Opp. Party and South Eastern Railway, and arbitration was invoked by notice dated 4.1.2016 under the agreement dated 15.6.2009. The arbitral tribunal entered upon reference on 20.11.2018. An arbitral award was initially passed on 10.5.2021**,** and thereafter corrected under Section 33 on 18.8.2021**,** awarding approximately Rs.1301.31 **crore** against South Eastern Railway. South Eastern Railway challenged the award before the Calcutta High Court in A.P. No. 482 of 2021**,** and by order dated 8.8.2023**,** unconditional stay was granted on a *prima facie* finding of fraud and non-fulfilment of contractual prerequisites. Subsequently, upon challenge, the Supreme Court *vide* order dated 25.01.2024 in SLP (C) Diary No. 49360 of 2023 in exercise of its powers under Article 142 was pleased to set aside the award in entirety and remanded the matter for a *de novo* adjudication by a Sole Arbitrator i.e Justice V Ramasubramanium .

10. Against East Coast Railway, the present Petitioner, separate arbitration proceedings were initiated by the Opp. Party claiming Rs.3755.95 crore**.** The Ld. Arbitral Tribunal passed an award dated 8.11.2023**,** awarding Rs.1707.29 crore against East Coast Railway. The categories of claims, periods of rake operation, and computation methodology were identical to those in the South Eastern Railway arbitration, with claim periods segregated based on territorial control of rakes. Comparative tables relied upon show overlapping timelines from 5.8.2008 **to** 15.6.2020**,** reflecting continuous contractual treatment under the Agreement dated 30.5.2007**.** Interest, freight rebate loss, and loss of profit constituted the principal heads of award. It is pertinent to note that at the relevant time no execution petition was filed by the Opp. Party in respect of the East Coast Railway award to the stay proceedings.

11. The present Petitioner filed Arbitration Petition **No.** 9 of 2024 under Section 34 of the Arbitration and Conciliation Act before the Ld. Commercial Court, Bhubaneswar on 2.2.2024**,** seeking setting aside of the arbitral award dated 8.11.2023**.** Along with the Section 34 petition, I.**A. No.** 01 of 2024 under Section 36(2) was filed seeking stay of the award, and **I.A. No.** 01 of 2025 under Section 151 CPC was filed raising the preliminary objection based on the Supreme Court order dated 25.01.2024 in SLP (C) Diary No. 49360 of 2023**,** arising out of the South Eastern Railway matter. Pleadings in the Section 34 petition are completed by both sides. The record notes that despite pendency of Section 34 and Section 151 applications, the Ld. Commercial Court proceeded only on the Section 36 stay application, which is the present impugned order.

12. By impugned order dated 2.9.2025, the Ld. Commercial Court, Bhubaneswar declined unconditional stay and directed conditional stay of the arbitral award dated 8.11.2023**,** subject to deposit of 100% of the awarded sum**,** namely Rs.1707.29 crore**,** comprising Rs.69.05 crore by Demand Draft and Rs.1638.24 crore by Bank Guarantee. The

I.A. under Section 151 CPC referring to the Supreme Court order dated 25.1.2024 was not adjudicated.

13. Now that the broad facts leading up to the instant Petition have been laid down, this Court shall endeavour to fully summarise the contentions of the Parties.

II. PETITIONER'S SUBMISSIONS:

14. The Ld. Counsel for the Petitioner Mr. N Venkatraman, ASGI contends that the impugned arbitral award dated 8.11.2023 and the conditional stay order dated 2.9.2025 suffer from fundamental perversity inasmuch as both failed to recognize that the Wagon Investment Scheme Agreement dated 30.5.2007 constitutes the sole and foundational contract governing the entire transaction. It is further argued that the supplementary agreements dated 15.6.2009 and 25.1.2018 merely altered loading and unloading points and territorial control of rakes, without creating fresh contracts or restarting the ten-year contractual tenure. The segregation of claim periods by the Opp. Party itself is relied upon as admission of temporal continuity of the original agreement. On this basis, it is urged that the arbitral award against East Coast Railway is inseparably linked with the award against South Eastern Railway, which has already been set aside by the Supreme Court vide order dated 25.1.2024 in in SLP (C) Diary No. 49360 of 2023.

15. It is further contended that the Ld. Commercial Court committed jurisdictional error by ignoring binding precedent under Article 141 of the Constitution, particularly the Supreme Court's order invoking Article 142 of the Constitution dated 25.1.2024 passed in proceedings involving the same Opposite Party, the same contractual scheme, and identical categories of claims. The Petitioner submits that the Supreme Court did not merely record consent but set aside the award and appointed a fresh arbitrator on account of serious infirmities amounting to fraud and patent illegality. It is argued that once such precedent was specifically placed before the Ld. Commercial Court through I.A. No. 01 of 2025 under Section 151 CPC, the Court was bound to examine its applicability before directing any monetary security, and failure to do so amounts to violation of Article 141 and failure to exercise jurisdiction.

16. The Petitioner also assails the impugned order on the ground of non-compliance with Section 36(3) of the Arbitration and Conciliation Act, 1996. It is pleaded that the Ld. Commercial Court recorded no findings on prima facie case of fraud, balance of convenience, irreparable injury, or proportionality of conditions, and mechanically imposed deposit of 100% of the awarded amount.

17. The Petitioner further contends that the present arbitral award is vitiated by fraud for being in conflict with the public policy of India, on the grounds identical to those recorded by the Calcutta High Court **on** 8.8.2023 and affirmed by the Supreme Court on 25.1.2024 in proceedings involving the same Opposite Party under the same Wagon Investment Scheme. It is pleaded that Rashmi Metaliks

Limited never constructed Nayagarh Private Siding, which was the *sine qua non* for loading obligation under the Agreement dated 30.5.2007**,** and yet claimed freight rebate and loss of profit as if contractual conditions were fulfilled. It is further pleaded that no indents and no wagon registration fee receipts were produced, and claims were raised despite admitted non-fulfilment of fundamental contractual prerequisites. The arbitral tribunal is stated to have ignored these material contractual conditions and evidence, and still granted freight-related benefits and speculative loss of profit, thereby causing unjust enrichment by the opposite party at the cost of public exchequer.

18. On this basis, it is submitted that enforcement of the arbitral award would lead to continuance of an alleged fraud, and that the nature of the allegations and attendant circumstances warrant consideration of an unconditional stay at the stage of Section 36 of the Arbitration and Conciliation Act, 1996.

19. It is further contended that the impugned order causes grave and irreversible prejudice by compelling blocking of Rs.1707.29 crore of public funds through deposit and bank guarantee without adjudication of fraud, illegality, or enforceability of the award. The Petitioner emphasizes that there is no statutory appeal against an order under Section 36(3), rendering Article 227 the only corrective jurisdiction. It is further submitted that the learned Commercial Court, Bhubaneswar while passing the impugned order, exhibited patent non-application of mind by completely overlooking material pleadings and documentary evidence relating to non-construction of the Nayagarh Private Siding, non-placement of indents, and an identical factual matrix which had already been judicially examined and noticed in proceedings involving the South Eastern Railway. The impugned order is, therefore, assailed as being perverse and unsustainable in law, having been rendered in disregard of the record as well as binding judicial precedents. On these premises, the Petitioner seeks for setting aside of the order dated 02.09.2025, grant of an unconditional stay of the arbitral award dated 08.11.2023, and referral of the dispute for re-arbitration in conformity with the directions issued by the Supreme Court by order dated 25.01.2024.

III. OPPOSITE PARTY'S SUBMISSIONS:

20. *Per contra*, the Ld. Counsel for the Opposite Party Mr. Kishore Datta Sr. Adv. contends that the writ petition under Article 227 is not maintainable, as the order dated 2.9.2025 has been passed in exercise of jurisdiction under Section 36(3) of the Arbitration and Conciliation Act, 1996, and supervisory jurisdiction ought not to be invoked in matters arising from arbitration. It is submitted that the Arbitration Act is a self-contained code and that discretionary orders on stay of money decrees should not be interfered with unless there is patent lack of jurisdiction, which is denied in the present case. The Opposite Party submits that the Ld. Commercial Court exercised discretion vested in it by statute and that the petitioner is attempting to bypass statutory procedure by invoking writ jurisdiction instead of pursuing remedies under the Act.

21. It is further contended that the arbitral proceedings against the East Coast Railway emanate from distinct contractual arrangements and operate within a separate territorial and administrative jurisdiction. It is accordingly submitted that the arbitral award dated 08.11.2023 cannot be automatically linked with the award rendered against the South Eastern Railway. It is asserted that the arbitration against East Coast Railway was based on breaches committed during the period when rakes remained under its jurisdiction, and that the claims were confined to such periods, as reflected in tabulated statements. The Opposite Party disputes the Petitioner's contention that all disputes must necessarily be governed by the outcome of the South Eastern Railway arbitration, and submits that each Railway zone is independently liable for breaches committed during its respective period of control over the rakes.

22. The Opposite Party further submits that the order dated 25.01.2024 passed by the Supreme Court was rendered with the consent of the parties and, as such, does not operate as a binding precedent so as to mandate the passing of similar orders in other proceedings It is further submitted that the Supreme Court did not adjudicate upon the merits of the arbitral award relating to the East Coast Railway, nor did it issue any direction governing arbitration proceedings arising within the jurisdiction of the East Coast Railway. On this basis, it is contended that the learned Commercial Court was justified in not treating the said order as determinative of the present application and in independently considering the prayer for stay under Section 36(3) of the Arbitration and Conciliation Act, 1996.The Opposite Party also contends that mere allegations of fraud cannot justify unconditional stay of a money award and that no finding of fraud has been recorded by any court in respect of the award dated 8.11.2023**.** It is also contended that Section 36(3) of the Arbitration and Conciliation Act, 1996 expressly permits the Court to impose conditions while granting stay of an arbitral award, and that a direction for deposit of the awarded amount is consistent with the settled principles governing stay of money decrees.

23. The Opposite Party further submits that the arbitral award is a reasoned one and that proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 are presently pending. It is contended that a balancing of equities requires the awarded amount to be secured so as to safeguard the successful claimant against prolonged deprivation of the fruits of the award. It is submitted that the financial burden pleaded by the Petitioner cannot constitute a valid ground to dispense with security in respect of a quantified monetary award, and that the public character of the funds involved does not confer immunity from compliance with judicial orders. Emphasis is placed on the statutory scheme post the 2015 amendment, under which enforcement of arbitral awards is the rule and grant of stay the exception, and it is also contended that an unconditional stay would defeat the very object of the Act. On these premises, the Opposite Party prays for dismissal of the writ petition and for affirmation of the conditional stay order dated 02.09.2025 passed by the learned Commercial Court.

IV. ISSUES FOR CONSIDERATION:

24. The petitioner has raised multiple grounds assailing the arbitral award and the proceedings culminating therein. However, at the present stage, this Court is not called upon to examine the legality or correctness of the award on merits, nor the validity of the contractual or factual determinations underlying it. The scope of the present proceedings is confined to examining the legality of the impugned order passed at the stage of enforcement and stay of the award, particularly in light of the statutory scheme governing post-award remedies and the binding effect of superior court orders placed on record.

25. Accordingly, the limited question that arises for consideration is whether in the facts of the present case, the imposition of a condition of full monetary security without consideration of binding precedent and allegations of fraud amounts to a failure to exercise jurisdiction in accordance with Section 36(3) of the Act.

A. WHETHER IN THE FACTS OF THE PRESENT CASE, THE IMPOSITION OF A CONDITION OF FULL MONETARY SECURITY WITHOUT CONSIDERATION OF BINDING PRECEDENT AND ALLEGATIONS OF FRAUD AMOUNTS

TO A FAILURE TO EXERCISE JURISDICTION IN ACCORDANCE WITH SECTION 36(3) OF THE ACT?

26. In the present circumstances, it would be appropriate and beneficial to refer to section 36 of the Arbitration Act, which reads thus:

> *"**36. Enforcement**.— (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Civil Procedure Code, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation, of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
>
> *Provided that the Court shall, 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 the Civil Procedure Code, 1908 (5 of 1908)*
>
> *Provided further that where the Court is satisfied that a prima facie case is made out that,—*
>
> *(a) the arbitration agreement or contract which is the basis of the award; or*

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation. — For the removal of doubts, it is hereby clarified that the above proviso shall apply to all Court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or Court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)."

27. Section 36 of the Arbitration and Conciliation Act, 1996 governs the enforcement of arbitral awards. Sub-section (1) stipulates that upon expiry of the period prescribed for filing an application under Section 34, the arbitral award shall be enforced in the same manner as a decree of a civil court. Sub-section (2) further clarifies that the mere filing of an application under Section 34 does not, by itself, render the award unenforceable, unless the Court, upon a separate application, grants a stay of its operation. The statutory scheme thus makes it clear that enforcement of an arbitral award is the norm, while stay is an exception, to be granted only by a reasoned judicial order and not as a consequence of pendency of proceedings. Sub-section (3) of Section 36 empowers the Court to grant stay of operation of the award, subject to such conditions as it may deem fit, and mandates that reasons must be recorded in writing. The first proviso requires the Court, in case of money awards, to have due regard to principles governing stay of money decrees under the

Code of Civil Procedure. The expression used is "having due regard to" and not "in accordance with", thereby making CPC principles guiding factors and not rigid commands.

28. The second proviso to Section 36(3), introduced by the Arbitration and Conciliation (Amendment) Act with retrospective effect from 23.10.2015, engrafts a distinct and mandatory exception to the general rule governing grant of stay. It mandates that when the Court is satisfied, on a prima facie assessment, that either the arbitration agreement or the making of the award was induced or affected by fraud or corruption, the Court shall grant an unconditional stay of the arbitral award pending disposal of the application under Section 34.

29. The language employed in the above section is unequivocally peremptory, and once the statutory threshold is met, the Court's discretion to impose conditions stands excluded. Therefore, the statutory scheme draws a clear distinction. In ordinary cases of money awards, stay may be granted subject to conditions, guided by CPC principles. However, in cases where *prima facie* fraud or corruption is shown in the rendering the award or the underlying contract, the law "mandates" unconditional stay. The burden is on the award-debtor to make out such prima facie case. The provision is intended to prevent enforcement of awards that are fundamentally tainted at the root.

30. The Act does not define fraud or corruption. Therefore, the content of these expressions must be understood from settled legal principles.

31. The *Oxford Dictionary* defines "fraud" as hereunder:

> *"n.1. Criminal deception; the use of the false misrepresentations to gain an unjust advantage. 2. A dishonest article or trick. 3. A person or thing not fulfilling what is claimed or expected of him, her, or it."*

32. From the legal standpoint *Black's Law Dictionary* (9th Edn.) defines "fraud" as hereunder:

> *"Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (es.p when the conduct is wilful) it may be a crime. Also termed intentional fraud."*

33. In ***S.P. Chengalvaraya Naidu* v. *Jagannath***[1], fraud was defined as hereunder:

> *"6. … An act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage…."*

34. In ***Venture Global Engg. LLC* v. *Tech Mahindra Ltd.***[2]: the Apex Court's deliberation on the meaning of fraud was as follows:

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[1] (1994) 1 SCC 1

[2] (2018) 1 SCC 656

"76. The expression 'fraud', what it means and once proved to have been committed by the party to the lis against his adversary then its effect on the judicial proceedings was succinctly explained by this Court in Ram Chandra Singh v. Savitri Devi [Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319] in the following words: (SCC pp. 327-329, paras 15-18, 23 and 25)

'15. … Fraud as is well-known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well-settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

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23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

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25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot *be perpetuated or saved by the application of any equitable doctrine including res judicata.'*

77. Similarly, how the leading authors have dealt with the expressions 'fraud', 'misrepresentation', 'suppression of material facts' with reference to various English cases also need to be taken note of. This is what the learned author Kerr in his book Fraud and Mistake has said on these expressions.

78. While dealing with the question as to what constitutes fraud, the learned author said, 'What amounts to fraud has been settled by the decision of House of Lords in Derry v. Peek [Derry v. Peek, [L.R.] 14 A.C. 337] …

'…fraud is proved when it is shown that a false representation has been made: (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false'.

79. The author has said that, courts of equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside….

80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however innocent his motive may have been, he is equally responsible in a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit himself. It matters not

> *that there was no intention to cheat or injure the person to whom the statement was made…."*

35. In common parlance, fraud connotes deception practised to secure an unfair advantage. In its legal sense, fraud encompasses a knowing misrepresentation or deliberate concealment of material facts, made with the intent to induce another to act to his detriment. It is well settled that fraud is not limited to express falsehoods, but also extends to suppression of material facts in circumstances where there exists a duty to disclose.

36. When the aforesaid principles are applied to the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996, the legislative intent becomes unmistakably clear. The proviso proceeds on the settled premise that fraud vitiates all proceedings and that an award tainted by fraud cannot be permitted to attain enforceability even on an interim basis. Once the Court is prima facie satisfied that the making of the arbitral award or the underlying arbitration agreement is vitiated by fraud or corruption, the statute mandates an unconditional stay of enforcement, thereby excluding any discretion to impose conditions. This statutory command is a direct reflection of the broader jurisprudential principle that fraud and justice cannot coexist, and that the sanctity of arbitral enforcement must yield where allegations of fraud strike at the very root of the award.

37. The emphasis, therefore, is not merely on the existence of concealment or misrepresentation, but on its impact on the arbitral decision. The award must be shown, on a prima facie basis, to be a consequence of such concealment or misrepresentation. The expression "making of the award" occurring in the proviso thus takes within its sweep not only the final determination but the entire decision-making process, including, in particular, the conduct of the parties during the arbitral proceedings and the evidentiary foundation placed before the arbitral tribunal..

38. English jurisprudence, as noticed in ***Elektrim SA v. Vivendi Universal SA***[3], similarly holds that an award is obtained by fraud where a party deliberately conceals documents or facts and, as a result of such concealment, secures an award in its favour. The party invoking fraud must establish prima facie that concealment occurred and that such concealment influenced the outcome of the award.

39. When the statutory understanding of fraud under the Indian Contract Act, 1872 is read in conjunction with the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996, it becomes evident that fraud impacting the very process by which the arbitral tribunal is invited to adjudicate necessarily bears upon the "making of the award." Where contractual pre-conditions are not fulfilled, yet claims are advanced, pursued, and adjudicated upon as if such conditions stood satisfied, the misrepresentation or suppression operates not merely at the level of pleadings but permeates the evidentiary foundation and decisional framework of the arbitral process. Such conduct, prima facie, vitiates the making of the award

[3] (2007) 2 All ER 365 (Comm)

itself, thereby attracting the mandatory consequence contemplated under the proviso, namely, an unconditional stay of enforcement pending adjudication under Section 34 of the Act.

40. If one reads conjointly, the concepts of fraud and corruption under the second proviso to Section 36(3) operate as a composite integrity test for the arbitral process. The Court is not required, at this stage, to render a final determination, but only to form a prima facie view as to whether the arbitration agreement or the making of the award stands vitiated by conduct that involves deception, suppression of material facts, misrepresentation, undue influence, or any departure from standards of fairness and probity that strikes at the root of the decision-making process. Where such infirmities are shown to have materially influenced the arbitral outcome, the proviso mandates an unconditional stay of enforcement, excluding the exercise of discretion as to conditions.

41. Applying the aforesaid heightened threshold to the facts of the present case, this Court is of the considered view that the material placed on record does disclose, at least prima facie, circumstances which go beyond mere procedural infirmities or errors of appreciation. The allegations pertain to advancement and adjudication of claims on the footing that foundational contractual pre-conditions stood fulfilled, notwithstanding pleadings and material suggesting non-construction of the Nayagarh Private Siding, non-placement of indents, and absence of compliance with essential prerequisites under the governing agreements. These aspects are not collateral or peripheral, but strike at the core of the entitlement itself and, consequently, at the evidentiary basis on which the arbitral tribunal proceeded. At this stage, the Court is not required to render a final pronouncement on the veracity of the allegations; however, the nature of the assertions and the material relied upon are sufficient to form a prima facie satisfaction that the alleged conduct, if established, bears directly upon the making of the award. The case thus crosses the threshold contemplated under the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996.

42. The second proviso to Section 36(3) is attracted only where the Court, on a prima facie assessment, is satisfied that the arbitration agreement or the making of the arbitral award was induced or affected by fraud or corruption of a serious and fundamental nature. The fraud alleged must be deliberate and relate to material facts, and must bear a direct and demonstrable nexus to the relief granted, such that disclosure of the misrepresented facts would likely have led the arbitral tribunal to a different conclusion. Mere procedural irregularities, errors in appreciation of evidence, or speculative allegations do not meet this threshold. At the stage of considering stay, the Court does not finally adjudicate upon the existence of fraud, but must be satisfied that the allegation is credible, non-speculative, and supported by material on record sufficient to indicate that the integrity of the arbitral decision-making process itself stands prima facie compromised. The legislative intent behind introducing the second proviso was to strike a balance between pro-enforcement policy and protection against tainted awards. While enforcement is to be facilitated, the law does not permit enforcement of awards that are prima facie products of deception and moral taint. The proviso thus acts as a statutory safety valve against abuse of arbitral process.

43. Consequently, where an award-debtor prima facie demonstrates that foundational contractual prerequisites were absent, material facts were suppressed or misrepresented, and yet substantial monetary relief was granted, the Court is duty-bound to examine whether the making of the arbitral award itself stands vitiated. Upon such prima facie satisfaction, the grant of an unconditional stay ceases to be discretionary and becomes mandatory under the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996, pending adjudication of the challenge under Section 34 of the Act.

44. It is also pertinent to mention here that Section 34 of the Arbitration and Conciliation Act, 1996 expressly recognizes fraud as a distinct and grave ground for setting aside an arbitral award, by statutorily incorporating it within the rubric of "public policy of India." Explanation 1 to Section 34(2)(b)(ii) clarifies, beyond any scope for ambiguity, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption. This legislative formulation elevates fraud from a mere factual allegation to a jurisdictional infirmity going to the root of the arbitral process and the legitimacy of the award itself. Consequently, where credible and prima facie material of fraud is pleaded and supported from the arbitral record, the Court is not dealing with a routine challenge to appreciation of evidence, but with an allegation that the very foundation of the award is tainted, rendering it vulnerable to annulment under Section 34.

45. While Section 36 embodies the post-2015 legislative policy that filing of a Section 34 petition does not, by itself, render an award unenforceable, sub-section (3) makes it clear that the Court retains discretion to stay enforcement, subject to reasons recorded in writing and subject to conditions it may deem fit. Ordinarily, in the case of money awards, the proviso mandates that the Court shall have due regard to the principles governing stay of money decrees under the Code of Civil Procedure, which generally favours securing the awarded amount. However, the statutory scheme does not treat all awards alike. The discretion under Section 36(3) is not mechanical or automatic, but is structured by statutory thresholds, judicial principles, and the nature of the infirmities alleged against the award, thereby requiring a calibrated and reasoned exercise of jurisdiction.

46. Significantly, the second proviso to Section 36(3), inserted by the 2021 amendment with retrospective clarification, carves out a categorical exception where fraud or corruption is alleged at a prima facie level in relation to either the arbitration agreement or the making of the award. In such circumstances, the statute mandates that the Court "shall stay the award unconditionally" pending disposal of the Section 34 challenge. The use of the word "shall" denotes absence of discretion once the Court is satisfied about the existence of a *prima facie* case of fraud. Therefore, where allegations of fraud are not speculative but arise from admitted contractual non-fulfilment or suppression of material facts, the Court is statutorily bound to consider unconditional stay, and imposition of onerous financial conditions without examining this statutory mandate would amount to failure to exercise jurisdiction vested by law.

47. The statutory scheme of Sections 34 and 36 of the Arbitration and Conciliation Act, 1996 makes it clear that the nature of the stay—whether conditional or unconditional—depends upon a "prior" judicial determination as to whether a *prima facie* case of fraud or corruption is disclosed. The statute contemplates a two-stage analytical exercise: first, (i) whether the challenge discloses *prima facie* fraud if the same is alleged by the Party; and only if the answer is in the negative, whether (ii) conditional stay with security is warranted under principles governing money decrees.

48. In the present case, this Court is concerned with an application filed by the Petitioner under Section 36 of the Arbitration and Conciliation Act, 1996, seeking stay of operation of the arbitral award dated 8.11.2023 passed against East Coast Railway. The Section 34 application challenging the said award has already been filed on 2.2.2024 before the Ld. Commercial Court, Bhubaneswar, and is pending for adjudication. In fact, along with the Section 36 application, the Petitioner has also filed **I.A. No.** 01 of 2025 under Section 151 CPC placing reliance on the Supreme Court's order dated 25.1.2024 passed in proceedings arising out of the same Wagon Investment Scheme Agreement.

49. It is also not in dispute that no execution proceeding was initiated by the Opp. Party against East Coast Railway in respect of the award dated 8.11.2023 at the time when the impugned order dated 2.9.2025 was passed by the Ld. Commercial Court.

50. This Court notes that the Petitioner had specifically pleaded that the arbitral award passed against South Eastern Railway, arising out of the same Wagon Investment Scheme Agreement dated 30.5.2007 and involving identical categories of claims, has already been set aside by the Supreme Court by its order dated 25.1.2024 with a direction for a *de novo* arbitration. This plea was not collateral or incidental. It formed part of the Petitioner's core challenge that the claims themselves were structurally tainted and that continuation of enforcement proceedings on the same contractual foundation, without examining the infirmities noted in the parallel arbitration, would perpetuate the very illegality and fraud alleged in the Section 34 proceedings.

51. The statutory mandate under Section 36(3), read with its second proviso, obliges the Court to undertake a threshold examination as to whether a *prima facie* case of fraud affecting either the contract or the making of the award is disclosed, since such a finding has a direct bearing on whether unconditional stay is statutorily mandated. The impugned order, however, proceeds on the footing that *"On perusal of the petitions under section 34 as well as section 36(2) of the Arbitration and Conciliation Act, I found that the Petitioner has not contended that it has come within the purview of the second proviso to Section 36(3) of the Act of 1996 and therefore entitled to an unconditional stay."*

52. This Court on the contrary, upon going through the Section 34 and 36 petitions, finds from the pleadings that the Petitioner has not merely challenged the award on technical or contractual grounds but has specifically alleged that the arbitral tribunal permitted and enforced a fraudulent claim, thereby vitiating the integrity of the arbitral process. In the grounds under Section 34, the Petitioner has expressly pleaded that the tribunal "allowed the fraudulent claim" in blatant violation of the terms of the Agreement, and such conduct indicates serious infirmity in the making of the award. Such pleading squarely attracts the statutory ground under Section 34(2)(b)(ii) read with Explanation 1(i), which treats an award induced or affected by fraud which may be treated as conflict with the public policy of India.

53. Apart from the express use of the term "fraudulent," the pleadings disclose detailed factual allegations which, in substance, constitute fraud and misrepresentation. The Petitioner has consistently pleaded that the Claimant never constructed the approved Nayagarh Private Siding, never placed contractual indents, and did not produce Wagon Registration Fee receipts and yet most audaciously claimed freight rebate, guaranteed rakes, and loss of profit as if all contractual preconditions were fulfilled. It is further pleaded that export-related loss was claimed despite absence of supporting export data and despite material suggesting mis-declaration of cargo. These allegations are not matters of mere contractual breach but go to the root of entitlement and suggest deliberate projection of false factual premises to obtain monetary benefit through arbitration.

54. In the present case, the allegation of fraud, as borne out from the pleadings and record, is **twofold** i.e. one relating to the claimant's conduct, and the other relating to the manner in which the arbitral process was allowed to culminate in the award without going into the facts in proper perspective.

a. **First**, it is alleged that the Opp. Party advanced claims for freight rebate, guaranteed rakes, and loss of profit under the Wagon Investment Scheme despite non-fulfilment of foundational contractual conditions. The approved loading point under the Agreement dated 30.5.2007 was Nayagarh Private Siding, which admittedly was never constructed. It is further alleged that no indents were placed in accordance with Railway procedure and no Wagon Registration Fee receipts were produced, yet the claimant proceeded on the premise that guaranteed rakes were denied despite compliance. On this basis, it is alleged that material facts relating to contractual entitlement were either misrepresented or suppressed, thereby inducing the arbitral tribunal to proceed on an incorrect factual foundation.

b. **Second**, it is alleged that the making of the award itself was induced by collusive or grossly negligent conduct of Railway officials, amounting to fraud on the arbitral process. The record reflects that despite claims running into more than **Rs.1700 crore**, East Coast Railway did not lead effective evidence, did not produce documents within its custody, and did not meaningfully contest critical factual assertions.

c. The aforesaid pattern of non-defence, when read with parallel arbitral history under the same scheme and the Supreme Court's order dated 25.1.2024 setting aside the South Eastern Railway award arising from the same contractual framework, is relied upon to allege that the arbitral process did not operate as a genuine adversarial adjudication but as a Machiavellian handy tool.

55. In substance, the allegation is not of a mere erroneous award, but of an arbitral outcome founded on a manufactured entitlement, resting on a demonstrably false factual premise, and facilitated by institutional abdication and deliberate non-contest by public officials, thereby engineering the arbitral result and inducing the making of the award within the meaning of the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996.

56. In such circumstances, the statutory scheme under Section 36(3) mandates that where allegations of fraud affecting either the contract or the making of the award are raised, the Court must first examine whether a *prima facie* case of fraud is disclosed, since the second proviso requires unconditional stay upon such satisfaction. Therefore, the determination of whether the challenge is fraud-based is not optional or collateral but jurisdictionally foundational to the nature of stay to be granted. Failure to undertake this exercise before directing deposit of the awarded amount results in bypassing a mandatory statutory safeguard and renders the stay order procedurally and legally unsustainable.

57. In any case, the Court cannot mechanically proceed to impose monetary conditions under Section 36(3) without first undertaking the threshold inquiry mandated by the second proviso. Especially when the Court itself records that during the course of hearing, the learned counsel for the Petitioner submitted that the Petitioner is entitled for unconditional stay of the Award as *prima facie* it has been obtained on the basis of fraud, patently illegal, perverse and based on no evidence. The discretion to impose conditions arises only after the Court forms an opinion that the case does not fall within the statutory category warranting unconditional stay. Failure to examine whether allegations of fraud are required to be addressed at the stay stage results in inversion of the statutory sequence, where the exception is ignored and the general rule is applied by default. Such an approach defeats the legislative intent underlying the 2021 amendment, which was introduced to prevent enforcement of awards that are prima facie tainted by fraud or corruption, even at the interim stage of Section 36 proceedings, pending final adjudication under Section 34.

58. Therefore, the exercise of jurisdiction under Section 36(3) necessarily obliges the Court to apply its mind to the pleadings and record to ascertain whether the challenge raises a *prima facie* case of fraud affecting the arbitration agreement or the award. Only upon recording a reasoned finding that no such *prima facie* case exists can the Court proceed to consider proportional conditions for stay, including deposit or bank guarantee. If, however, the Court omits this mandatory evaluative step and straightaway directs full security, it not only disregards the statutory command of unconditional stay in fraud cases, but also fails to exercise jurisdiction in the manner prescribed by law, rendering the stay order vulnerable to supervisory correction.

59. This Court also notes that the Petitioner had relied upon the order of the Calcutta High Court dated 8.8.2023 in proceedings arising from the South Eastern Railway arbitration, wherein serious *prima facie* observations were recorded regarding the integrity of claims under the same Wagon Investment Scheme. The Calcutta High Court observed therein which are as follows:

> *"44. In the present case, with respect to the conduct of the parties, this Court observes a disconcerting trend where the hallowed principles of honesty, integrity and probity seem to have gone up in smoke. It shocks the conscience of this Court to observe that the Railways, in defending a claim valued above Rs. 4000 crores, declined to present any witness and refrained from leading any evidence. Subsequently in the arbitral proceedings, the lackadaisical and indifferent attitude of the Railways during the cross examination of the claimant witnesses, as also noted in the arbitral award, leaves much to be said about the sordid state of affairs and absolute apathetic approach of the Railways which happens to be a Government of India public sector undertaking dealing with funds of the public exchequer.*
>
> *45. Such an extraordinary misconduct of the Railways during the arbitral proceedings raises several suspicions in the eye of this Court.*
>
> *46. This Court is at pains to re-emphasize that dishonesty is the cornerstone for fraud and that Railway's reluctance in leading evidence, inept cross-examination, non-submission of documentary evidences, etc., does not fall short of actual and deliberate fraud and/or corruption which may have taken place in the present case. The magnitude of the claim and the consequent irreparable harm it shall have on the Railways and public exchequer cannot be ignored. There seems to be extraneous considerations at play which are beyond the comprehension of this Court.*
>
> *Xxx*

> *49. In the proceedings before the tribunal, for both the arbitral award as well as the corrections order, the willing silence of the petitioner is too loud to go neglected and prima facie leads to the conclusion that there is unseen foul play wherein collusion between the parties to the proceedings has led the arbitral tribunal into passing an award which is deeply induced and effected either by fraud or corruption, or both.*
>
> *Xxx*
>
> *60. Furthermore, I hereby also direct the Ministry of Finance, Union of India to immediately constitute a multi-member high-level enquiry committee headed by a Secretary to the Government of India level rank officer to holistically inquire into the shocking conduct of the Railways and its officials (both serving and retired) and the other stakeholders in the aforementioned matter. The Committee shall be at liberty to take assistance of central investigation agencies as it may deem fit. The Committee is further requested to complete the enquiry and submit a report before this Court within three months from the date of this order."*

Although the said order was set aside by the Supreme Court, the Supreme Court did not restore the award but instead directed fresh arbitration, thereby nullifying the earlier arbitral outcome in its entirety. This procedural course lends support to the Petitioner's contention that the claims themselves warranted re-examination and could not be treated as presumptively valid for the purpose of enforcement.

60. It is also pertinent to note herein that the Apex Court vide the aforementioned order dated 25.1.2024 has also observed as follows:

> *"… 2. … (ii) Justice V Ramasubramanian, former Judge of the Supreme Court is appointed as the sole Arbitrator to adjudicate on the disputes arising out of the Wagon Investment Scheme Agreements dated 30 May 2007 and 15 June 2007;…"*

An argument was raised by Mr. Venkatraman ASG, at the bar that the present dispute which squarely arises out of the foundational contract dates 30.5.2007 thus in terms of the aforesaid direction this Court ought to send the present arbitral proceedings to the said Ld. Sole Arbitrator straightaway. Such a submission although appears appealing at first sight, this court cannot lose sight of the fact that the same was done by the Supreme court invoking its powers under Article 142 of the Constitution of India and the order was a consent order by the parties. The present proceedings though arising out of the same scheme, this Court, cannot, in exercise of its powers under Articles 226 and 227 of the Constitution, grant reliefs such as referral of the dispute for re-arbitration or setting aside of the arbitral award. Directions of the nature sought as to whether for setting aside an award or for ordering re-arbitration are beyond the permissible contours of this Court's jurisdiction under Articles 226 and 227.

61. This Court also notes that the application under Section 151 CPC raising the effect of the Supreme Court's order dated 25.1.2024 has not been adjudicated at all. The impugned order does not record whether that application was allowed, rejected, or kept pending. Such omission affects the decision-making process itself, rendering the order vulnerable on procedural grounds as well.

62. The Petitioner had placed comparative statements on record before the Ld. Commercial Court demonstrating that the claim periods, claim heads, and computation methodology in both arbitrations were overlapping and segmented only on the basis of territorial control of rakes. These documents were relied upon to substantiate the plea that the claims were not independent or discrete, but part of a continuous transactional framework under the same investment scheme, giving rise to a prima facie case that the same pattern of allegedly fraudulent claims had been pursued against two different Railway zones. These materials, forming part of the Section 151 application, ought to have been examined first.

63. This Court is of the considered view that the application filed by the Petitioner under Section 151 of the Code of Civil Procedure, invoking the inherent powers of the Court and specifically placing reliance on the order of the Supreme Court dated 25.1.2024, ought to have been taken up and adjudicated as a preliminary issue before consideration of the application under Section 36(3) of the Arbitration and Conciliation Act. The Section 151 application was not merely procedural in nature, but raised a substantive jurisdictional objection touching upon the very enforceability of the award in light of subsequent judicial developments and allegations of fraud forming the foundation of the Section 34 challenge.

64. The issues raised in the Section 151 application had a direct and important bearing on the nature of stay to be granted under Section 36(3). If the Court were to find that the Supreme Court's order in the parallel arbitration, coupled with the overlapping contractual matrix and identical claim structure, disclosed a *prima facie* case of fraud or at least serious enforceability concerns, the statutory consequence under the second proviso to Section 36(3) would be grant of unconditional stay. Therefore, the decision on the Section 151 application was logically anterior and jurisdictionally relevant to the exercise of discretion on the Section 36 stay application.

65. By deferring and effectively bypassing adjudication of the Section 151 application, the Ld. Commercial Court proceeded to impose onerous financial conditions without first resolving the threshold objections raised to enforcement of the award. Such a course of action results in procedural distortion, where the consequence is determined without examination of the governing premise. This approach not only frustrates the very object of invoking inherent jurisdiction to prevent abuse of process, but also undermines the statutory mandate that allegations of fraud must receive prior judicial evaluation before any direction for security is issued; failing which, substantial public funds stand exposed to irreversible dissipation.

66. Reverting to the issue at hand, this Court clarifies that it expresses no final opinion on the merits of the challenge under Section 34 of the Arbitration and Conciliation Act, 1996, which lies within the exclusive domain of the learned Commercial Court. The limited enquiry before this Court is whether the discretion under Section 36(3) was exercised in accordance with law and whether the mandatory statutory considerations, particularly those arising from the provisos thereto, were duly addressed. On a plain reading of the impugned order, this Court finds a conspicuous absence of any such consideration. Therefore, this Court is of the view that the impugned order dated 2.9.2025 suffers from material irregularity, non-consideration of binding precedent, non-application of statutory standards under Section 36(3), and failure to consider pleadings alleging fraud. The order, in its present form, cannot be sustained.

67. Having regard to the entirety of the circumstances, including the pendency of the challenge under Section 34, the existence of a parallel arbitral history arising under the same scheme, the setting aside of the earlier award by the Supreme Court, and the serious allegations of non-fulfilment of foundational contractual obligations, this Court is satisfied that a prima facie case is made out warranting protection against enforcement of the arbitral award pending adjudication. Accordingly, the impugned order dated 2.9.2025 passed by the Ld. Commercial Court, Bhubaneswar directing deposit of the awarded amount as a condition for stay is liable to be set aside.

68. As a parting note, it must be observed that the practical effect of the impugned order is to compel the East Coast Railway which is a public authority, to immobilise ₹1700 crore of public funds at the very threshold of the proceedings, without any prior adjudication on enforceability, without examination of the allegations of fraud, and without due consideration of the binding judicial material placed before the Court. This Court cannot be unmindful of the fact that such funds form part of the public exchequer and that their sequestration carries consequences far beyond the realm of private commercial inconvenience. This Court, therefore, finds it necessary to record certain observations on the conduct of both parties in the arbitral proceedings, as emerging from the record, which bear directly on the issue as to whether the making of the arbitral award was induced or effected by fraud within the meaning of the second proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996.Where a public authority chooses not to adduce evidence, not to produce documents, and not to test crucial assertions through cross-examination, the arbitral tribunal is deprived of balanced assistance, and the decision-making process itself becomes vulnerable to distortion. Such conduct, when viewed in isolation, may appear as poor litigation management. However, when viewed in context of parallel awards, overlapping claims, and judicial setting aside of one such award, it acquires a complexion that cannot be ignored while considering statutory protection against enforcement.

69. This Court is, therefore, of the considered view that given the magnitude of financial exposure and the repeated pattern of arbitral outcomes under the same scheme, between the same parties, warrant introspection within Railway administration as to how contractual disputes of such scale are being handled and defended. Public confidence in institutional arbitration cannot survive if public sector entities themselves fail to treat arbitral proceedings with the seriousness of solemn litigation, particularly where consequences directly impact national exchequer.

70. This Court, therefore, considers it necessary that Railway authorities undertake internal review of litigation conduct under Wagon Investment Scheme disputes, so that public interest is not compromised by administrative indifference or procedural passivity. This Court is of the view that there is pressing need for formulation of a Standard Operating Procedure (SOP) governing arbitration matters involving claims of substantial value, so that responsibility is clearly demarcated at every stage, from appointment of counsel, supervision of pleadings, production of evidence, to conduct of cross-examination and monitoring of arbitral proceedings. Such SOP may also include periodic internal review of pending arbitrations and accountability mechanisms for lapses in defence. While arbitration is intended to be efficient and less formal, this cannot become a justification for casual or indifferent handling of disputes involving public funds. These internal mechanisms must exist not merely to defend claims, but also to detect patterns of repeated financial exposure under similar contractual frameworks. Such mechanisms should be capable of triggering independent review when awards of significant value are passed, especially where foundational contractual conditions appear to have been overlooked or waived without justification. Absence of such safeguards risks normalization of loss to public exchequer under the cloak of arbitral finality.

71. This Court feels that it may be expedient that an SOP so framed may also contemplate fixing of individual responsibility on officers entrusted with handling of arbitration matters, including those tasked with supervision of legal strategy and evidence management. While policy formulation lies within the executive domain, accountability at individual level is integral to deterrence against systemic failure. Where financial liability arises due to demonstrable neglect, deliberate omission, or repeated disregard of established procedure, the question of fastening administrative or financial consequences on responsible officers may deserve consideration by competent authorities. Such measures, if thoughtfully structured, would not only protect public funds but also reinforce institutional discipline. On the other hand, this court is fully cognizant that such dereliction of duty of public authorities may or may not be due to external influences by the private parties concerned in the arbitral proceedings. It is time, that perhaps, the appropriate investigating agencies such as the CBI, look at such cases, such as the present one, *suo motu* so that the interest of the public exchequer is protected and any recalcitrant parties is not allowed to ride roughshod over sacrosanct mechanisms i.e. arbitrary proceedings in the country which impact the national exchequer adversely and to imbue a sense of responsibility in public officials dealing with such matters.

72. CONCLUSION:

73. For the reasons recorded hereinabove, the impugned order dated 2.9.2025 passed by the Ld. Commercial Court, Bhubaneswar in **I.A. No.** 01 of 2024 arising out of Arbitration Petition **No.** 09 of 2024 is hereby set aside.

74. The arbitral award dated 8.11.2023 passed against East Coast Railway shall remain stayed unconditionally during pendency of the application under Section 34 of the Arbitration and Conciliation Act, 1996.

75. The Ld. Commercial Court, Bhubaneswar is directed to take up I.A. **No.** 01 of 2025 filed under Section 151 CPC in Arbitration Petition **No.** 09 of 2024 for final hearing and dispose of the same expeditiously, preferably within a period of one month from the date of communication of this order, without being influenced by any observations made herein, which are confined solely to the issue of interim protection under Section 36.

76. It is clarified that this Court has not expressed any opinion on merits of the arbitral award or on the contentions raised in the Section 34 proceedings, and all such issues shall remain open for adjudication by the Ld. Commercial Court.

77. The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

78. Urgent certified copy of this judgment, if applied for, shall be supplied to the parties in accordance with rules.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th Jan., 2026/