

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APOT/103/2026

ITD-ITD CEM JOINT VENTURE

Vs.

KOLKATA METRO RAIL CORPORATION LTD.

For the Appellant	:Mr. Jishnu Saha, Sr. Adv. Mr. Anal Kumar Ghosh, Adv. Ms. Hashnuhana Chakraborty, Adv. Ms. Neelina Chatterjee, Adv. Ms. Ahana Bhattacharyya, Adv.
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For the Respondent	:Mr. Sakya Sen, Sr. Adv. Ms. Sreya Basu, Adv. Mr. Sunil Gupta, Adv. Mr. Ankit Dey, Adv. Mr. Atri Mandal, Adv.
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Hearing Concluded on : June 22, 2026

Judgement on : July 15, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated May 8, 2026 passed in AP COM 181 of 2024.
2. By the impugned judgment and order, learned Single Judge has dismissed the petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the appellant directed against the award dated November 21, 2019.

3. Learned Senior Advocate appearing for the appellant has contended that, on March 10, 2010, the parties entered into a contract. He has referred to the contract documents namely, the letter of acceptance, the general condition of contract and the special condition of contract. He has submitted that, disputes and differences arose between the parties in relation to such contract which were referred to arbitration.

4. Learned Senior Advocate appearing for the appellant has drawn the attention of the Court to the statement of claim filed by the appellant before the Arbitral Tribunal. Essentially the claimants had four heads of claims. He has pointed out the heads of claim in the statement of claim. He has contended that, claim No. 1 was on account of unrecovered additional establishment cost due to expansion of Phase 1 part of the work. Claim No. 2 was on account of loss suffered due to arbitrary reduction in the overhead percentage from 20 per cent to 50 per cent in respect of Phase 1 part of the work while, claim No. 3 related to loss of interest in respect of excess recovery and prolonged withholding of retention sum in respect of Phase 1 part of the work.

5. Learned Senior Advocate appearing for the appellant has pointed out that in the statement of claim, appellant had prayed for loss on account of interest due to wrongful recovery on Mobilisation Advance as claim no. 4. He has also pointed out that, the appellant has claimed declaratory awards in respect of claim No. 1 and 2.

6. Learned Senior Advocate appearing for the appellant has contended that, by the award dated November 21, 2019, the Arbitral Tribunal rejected claim Nos. 1 and 3 while allowing claim Nos. 2 and 4. He has pointed out that, the counter claims made by the respondent were also rejected.

7. Learned Senior Advocate appearing for the appellant has contended that, both the Arbitral Tribunal and the learned Single Judge exercising jurisdiction under Section 34 of the Act of 1996 mis-read and mis-construed the express provisions of the contract. He has submitted that, the Arbitral Tribunal as well as the learned Single Judge has overlooked the law laid down by the Hon'ble Supreme Court. In support of such contention, he relied upon **2025 Volume 2 Supreme Court Cases 417 (OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and Another)** and **2019 Volume 15 Supreme Court Cases**

131 (Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)).

8. Learned Senior Advocate appearing for the appellant has contended that, both the Arbitral Tribunal and the learned Single Judge has interpreted the relevant Clauses of the contract incorrectly. Misreading the contract and failing to apply the law are patent illegality committed by the Arbitral Tribunal which has vitiated the award. In support of such contention he has relied upon **2024 Volume 6 Supreme Court Cases 357 (Delhi Metro Rail Corporation Limited vs. Delhi Airport metro Express Private Limited), 2007 Volume 13 Supreme Court Cases 43 (K. N. Sathyapalan vs. State of Kerala and Another), 2017 Volume 8 Supreme Court Cases 146 (Assam State Electricity board and Others vs. Buildworth Private Limited)** and **2012 SCC OnLine Bom 1373 (Union of India vs. Suraj Infrastructure Pvt. Ltd. and Another).**

9. Learned Senior Advocate appearing for the appellant has contended that since, the parties agreed to rely upon documents only and not to adduce oral evidence, Arbitral Tribunal has erred in holding that, no evidence was placed in

support of the claim of the appellant. Learned Trial Judge has erred in concurring with such view of the Arbitral Tribunal.

10. Learned Senior Advocate appearing for the appellant has contended that, while rejecting claim No. 1, Arbitral Tribunal had proceeded on the basis of the modification of the contract. He has referred to the consideration of the Arbitral Tribunal with regard to claim No. 1 in this regard. He has contended that, the Arbitral Tribunal did not appreciate Clauses 8.3 and 8.4.1 of the contract. The interpretation of such clauses of the contract by the Arbitral Tribunal is unreasonable.

11. Referring to claim No. 3, learned Senior Advocate appearing for the appellant has contended that, Clause 8.3 of the contract do not bar such claim. He has contended that, cost variation is governed by Clause 12 of the contract. He has referred to cost variation and incidents of variation. He has contended that, there is no clause for adjustment. There is also no provision for inclusion of additional cost.

12. Learned Senior Advocate appearing for the appellant has contended that, in support of claim No. 3, appellant relied upon the Chartered Account Certificate which is more than sufficient evidence to establish such claim. The parties had

agreed not to advance any oral evidence. Arbitration had proceeded on the basis of documents. Therefore, the Arbitral Tribunal has erred in holding that there is no evidence in support of claim no. 3. He has relied upon **2006 Volume 11 SCC 181 (McDermott International INC. vs. Burn Standard Co. Ltd. and Others)** in this regard.

13. Learned Senior Advocate appearing for the appellant has contended that, claim No. 3 is based on Clause No. 25 of the contract. He has contended that, the Arbitral Tribunal did not consider Clause No. 25 of the contract.

14. On the scope and ambit of powers under Section 34 and 37 of the Act of 1996, learned Senior Advocate appearing for the appellant has relied upon **2025 Volume 2 Supreme Court Cases 417 (OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and Another).**

15. Learned Senior Advocate appearing for the respondent has submitted that, the contract value was never reduced to the variation in the alignment of the work. He has contended that, while, a portion of the initial value of the contract was deleted, due to the variation in the alignment, additional value was added to the contract. He has pointed out that, the initial

contract for Rs. 908 crores was enhanced to a contract for Rs. 1,279 crores on the variation of the alignment.

16. Learned Senior Advocate appearing for the respondent has contended that, the award contains sufficient reasons as to the ground for rejection of the respective claims of the parties. He has referred to the award in this regard.

17. Learned Senior Advocate appearing for the respondent has contended that, the award correctly interprets Clauses 2.2, 8.3.3, 12.3 of the general condition of Contract as also clause 23.1 of the special condition of contract. He has contended that, since the Arbitral Tribunal remained within its jurisdiction in interpreting the materials place before it, no interference is called for by the Court exercising powers under Section 34 of the Act of 1996.

18. Learned Senior Advocate appearing for the respondent has relied upon ***(2020) 15 Supreme Court Cases 401 (K. Marappan (Dead) Through Sole Legal Representatives Balasubramanian Versus Superintending Engineer T.B.P.H.L.C. Circle Anantapur)*** in support of his contention with regard to the interpretation of contractual labourers.

19. Learned Senior Advocate appearing for the respondent has drawn the attention of the Court to the various Clauses of

the contract. He has relied upon Clause 23.1 of the Special Conditions of Contract and Clause 12.3 of the General Conditions of Contract. He has contended that, pre-bid meetings were held. In course of execution of the contract, the appellant had asked for extension of time which were granted. He has referred to such extension of time made by the appellant and contended that, such extension of time was sought without reserving any right to claim damages. He has referred to Clauses 8.3 and 8.4.1 which governs extension of time to complete the contract.

20. Learned Senior Advocate appearing for the respondent has also referred to the letter extending the time for execution of the contract dated December 21, 2016. He has pointed out that, the appellant accepted such extension without any complain. According to him, once, the appellant had accepted such extension without reserving any claim for damages, Clause 8.3 of the contract comes into operation.

21. Learned Senior Advocate appearing for the respondent has contended that, the value of the contract after change of alignment was decided upon. Such decision was communicated to the appellant. Appellant had submitted a techno-commercial offer on December 20, 2015 and revised

the same on April 7, 2016 and May 6, 2016. Respondent had accepted revised offer on November 8, 2016. The appellant did not reserve the right to claim damages on account of change of alignment.

22. Learned Senior Advocate appearing for the respondent has contended that, the parties had acted on the basis of Clause 8.3.1 of the General Conditions of Contract at all stages contemporaneously. The claim for damages is an afterthought.

23. Learned Senior Advocate appearing for the respondent has contended that, claim Nos. 1 and 3 were rightly rejected by the Arbitral Tribunal. He has relied upon **2026 Volume 3 Supreme Court Cases 186 (Jan De Nul Dredging India Private Limited vs. Tuticorin Port Trust)** and **2024 SCC OnLine 2632 (Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and Others)** with regard to the powers of the Court under Section 37 of the Act of 1996.

24. Party had entered into a contract for design and construction of underground section of Metro Railway from Central Station to Subhas Sarovar on February 9, 2010 at a price of Rs. 815,66,63,700/-. Contract had specified the

period of completion to be 217 weeks from the commencing date as stipulated in the notice to proceed which is the same as the letter of acceptance.

25. Under the contract, appellant had to complete the design and construction of underground section from Central Station to Subhas Sarovar within 217 weeks that is, on or before April 8, 2014 commencing from February 9, 2010 being the date of the letter of acceptance.

26. In order to give effect to such contract, parties had entered into a written document on March 10, 2010.

27. In course of completion of contract, appellant had from time to time sought extension of time which were granted. Appellant had sought four extensions of time commencing from its first letter dated January 21, 2013 till its last letter dated April 7, 2018. Request for extension of time on the part of the appellant was unqualified and the respondent had also granted unqualified extension of time.

28. Parties had agreed to a revised contract due to the alteration in the route of the underground tunnel. Respondent had issued an Amendment Order dated November 8, 2016 and fixed the price of Rs. 1279, 81, 02, 403/-.

29. It would be apposite to set out the chart of changes in the original contract as appearing in the award herein. Such changes are as follows:-

<i>SN</i>	<i>DETAILS</i>	<i>AMOUNT (INR CRORE)</i>
<i>I</i>	<i>Original Contract Price for the work of section Subhas Sarobar – Phool Bagan – Sealdah – Central Station</i>	<i>908.63</i>
<i>ii</i>	<i>Price of work deleted from Sealdah – Central Station</i>	<i>(-) 250.68</i>
<i>Iii</i>	<i>Revised Contract Price for Phase I – Subhas Sarobar – Phool Bagan – Sealdah (i-ii)</i>	<i>657.95</i>
<i>Iv</i>	<i>Contract price for Phase II Sealdah – Central Station</i>	<i>(+) 621. 86</i>
<i>V</i>	<i>Total Revised Contract Price (iii+iv)</i>	<i>1279.81</i>

30. Disputes and differences had arisen between the parties. Such disputes had been referred to the Arbitral Tribunal. In the arbitration proceedings, appellant had submitted its statement of claim, respondent had submitted counter claim of facts/statement of defence and counter claims and the appellant had submitted a rejoinder with the respondent submitting a sub-rejoinder.

31. Arbitral Tribunal had held six sittings of the arbitration. Arbitral Tribunal had published the award on November 21, 2019.

32. In the statement of claims, appellant had made four principal claims which are as follows:-

<i>Claim No</i>	<i>Items of Claims</i>	<i>Amount (INR)</i>
01	<i>Claim on account of unrecovered additional establishment cost due to extension of Phase 1 part of work</i>	177,77,50,000
02	<i>Claim on account of loss suffered due to arbitrary reduction in the overhead (OH) % age in respect of Phase 1 part of work</i>	1,68,24,647
03	<i>Claim on account of loss of interest in respect of excess recovery and prolonged withholding of retention sum in respect of Phase 1 part of work</i>	27,93,38,134
04	<i>Claim towards lost interest due to wrongful recovery of interest on mobilization advance.</i>	1,52,62,207
	<i>Total:</i>	208,91,74,988

33. Respondent had made counter claim in the arbitration which is as follows:-

1	<i>Undue claim of OH & profit for some variation works</i>	1,49,73,213
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34. Arbitral Tribunal had rejected claims no. 1 and 3 of the appellant and the counter claim of the respondent. Arbitral Tribunal had allowed claims no. 2 and 4 of the appellant.

35. While rejecting claim No. 1 of the appellant which is on account of unrecovered additional establishment costs due to extension of Phase I part of the work, Arbitral Tribunal has considered clauses 8.3 and 8.4 of the General Conditions of Contract. Arbitral Tribunal has considered Section 29 of the

Indian Contract Act, 1872. Arbitral Tribunal has also considered the authorities cited before it.

36. On claim No. 1, Arbitral Tribunal has held that, there was delay in completion of the assignment done on account of delay in handover of works sought, traffic restriction imposed by Kolkata Traffic Police and assignment of additional work due to employee variation. Arbitral Tribunal has held that, unqualified extension of time sought for by the appellant and granted by the respondent were with due consideration to Clauses 2.2 and 8.3 of the General Conditions of Contract.

37. Arbitral Tribunal has referred to Clauses 2.2 and 8.3 of the General Conditions of Contract as one of the grounds to deny claim no. 1 of the appellant. Such Clauses are as follows:-

2.2 The Employer shall grant the Contractor right of access to possession of the Site progressively for the Completion of Works. Such right and possession may not be exclusive to the Contractor. The Contractor will draw modify the schedule for completion of Works according to progressively possession/right of such sites.

If the Contractor suffers delay form failure on the part of the Employer to grant right of access to or possession of the Site, the Contractor shall give notice to the Engineer in a period of 28 days of such occurrence. After receipt of such notice the Engineer shall proceed to determine any extension

of time to which the Contractor is entitled any shall notify the Contractor accordingly.

8.3 In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages and any other compensation for the damages suffered by the Employer as per Clause 8.5. This is without prejudice to the right of the Employer to rescind the Contract.

Failure or delay by the Employer or the Engineer to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works to give necessary notice to commence the Works or to provide necessary Drawings or instructions or clarifications or to supply any material plant or machinery which under the Contract is the responsibility of the Employer shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract as in his opinion is/are reasonable.

38. Arbitral Tribunal, in addition to these two Clauses of the contract has cited that, claim no. 1 of the appellant cannot be granted in view of, the claim not being substantiated. Arbitral Tribunal has given reasons for rejection of the same on such account in paragraph 3.1.3 (vi).

39. In paragraph 3.1.3 (v) in addition to clauses 2.2 and 8.3 of the General Conditions of Contract, Arbitral Tribunal

has stated that the claim no. 1 of the appellant was time barred.

40. Arbitral Tribunal has rejected claim no. 3 of the appellant on account of loss of interest in respect of excess recovery and prolonged withholding of retention sum extension phase in respect of Phase 1 part of the work. Arbitral Tribunal has noted the respective contentions on such issue. It has held that, the value of the original contract price remained at Rs. 908.63 crores till its approval of the variation on November 8, 2016. It has noted that, even after approval of such variation, the contract was revised and not concluded. It has noted that the appellant had accepted the fact that the respondent initially demanded Rs. 10 crores on account of deduction in amount of revised contract and later converted the entire cash retention amount to bank guarantee on mutual consent. In the factual matrix, Arbitral Tribunal had rejected the claim No. 3.

41. Arbitral Tribunal had rejected the counter claim made by the respondent. Respondent is not before us claiming that such rejection of the counter claim by the Arbitral Tribunal is wrong.

42. Scope of challenge to an award passed by an Arbitral Tribunal, has been considered by various authorities. In ***OPG Power Generation (supra)*** Supreme Court after noticing previous authorities, has held that, disregarding orders of Supreme Court and the binding effect of the judgment of a Supreme Court could be regarded as being contrary to the fundamental policy of the Indian Law. It has explained that perversity arises where a finding is based on no evidence or where irrelevant material was taken into account or where vital evidence was ignored.

43. ***Ssangyong Engg. & Construction (supra)*** has held that, the interpretation of the contract is within the domain of the arbitrator. It has held that, unless the interpretation of the contract by the arbitrator is such that no fair minded or reasonable person could accept, the Court should not intervene. It has explained patent illegality to mean that a glaring illegality going to the root of the award including the deciding matters beyond the scope of the arbitration, contradicting India's substantive law or the Act of 1996 or in violation of the terms of the contract or being so unreasonable or irrational which tantamount to an error apparent on the face of the award.

44. In ***DMRC (supra)*** Supreme Court has held that, while Courts must respect arbitral awards, Courts nonetheless can set aside the award where the interpretation of the contract by the Arbitrator is irrational or so unreasonable that no prudent person could adopt it. It has held that, Court can set aside the award if the interpretation of the terms and conditions of the contract is not a possible view.

45. ***K.N. Sathyapalan (supra)*** has held that, where the contractor in the contract fails to perform its obligations then, the arbitrator may award compensation for the costs incurred even in absence of an express escalation clause.

46. ***Assam SEB (supra)*** has held that, where the view taken by the arbitrator on the interpretation of the contract and the conduct of the parties, is a plausible view, then, Court should not interfere merely because a different view should be taken. It has held that, where the Arbitral Tribunal is not guilty of mis-conduct or where there were no errors on face of the award, and the award is supported by materials on record, view taken by arbitrator must be upheld.

47. ***Suraj Infrastructures (supra)*** has held that, the Arbitral Tribunal or the Court is not prohibited from granting compensation, if such case is made out and proved. It has

observed that, compensation can be granted if the delay in execution of the work occurred due to conduct or the act of the other party to the contract.

48. *McDermott International Inc. (supra)* has held that for raising the claim on account of breach of contract, there need not be an invoice. It has noted that there are various formula for the purpose of calculating the quantum of compensation receivable by the party to the contract.

49. *K. Marappan (supra)* has held that, it would not be open to contractor to claim compensation which arises on account of the work delayed or suffered from hindrance. In the facts of that case, Court has considered Clause 59 of the contract.

50. On the aspect of scope of powers under Sections 34 and 37 of the Act of 1996 is concerned, ***Punjab State Civil Supplies Corporation (supra)*** has held that, the scope under Section 37 of the Act of 1996 is narrow. It has held that the Court under Section 37 of the Act of 1996 is to evaluate whether or not the Court exercised correct parameters while evaluating a challenge under Section 34 of the Act of 1996.

51. *Jan De Nul Dredging (supra)* has held that, Court exercising powers under Sections 34 and 37 of the Act of 1996

are not Appeal Courts. They are not to interfere with the award of the Arbitral Tribunal on the mere possibility of an alternative view.

52. In the facts and circumstances of the present case, the view taken by the Arbitral Tribunal, in so far as such Arbitral Tribunal proceeding to disallow the two claims of the appellant are concerned, cannot be classified as perverse or patently unreasonable nor can it be said to have overlooked the provisions of law.

53. The appellant has premised claim No. 1 on the ground of extension of phase 1 part of the work. Arbitral tribunal has taken into consideration the prayer for extension of time made by the appellant and the grant thereof by the respondent. The appellant had requested for extension of time to complete the contract under phase 1, unconditionally which the respondent had granted. Moreover, change of alignment of the work was proposed during the execution of the contract by the appellant. It was done within the extended period. The appellant had participated in the process of change of alignment and the cost that would be incurred.

54. Original contract value had been changed with the consent of the respondent. While the original contract price

was for Rs. 908.63, the revised contract Price was Rs. 1, 279.81. Amendment order was issued on November 8, 2016. Such Amendment order was issued within the extended period of the contract for execution of the phase 1. Time to complete the original phase I contract after extension was to expire on April 7, 2018.

55. The modified price of the contract had been arrived at after negotiation. In any event, the appellant after having accepted the modified price cannot be allowed to turn around to claim damages.

56. The view of the Arbitral Tribunal as recorded in the award on such aspect therefore cannot be said to be perverse or not a plausible view.

57. So far as claim No. 3 is concerned, again, the view expressed by the Arbitral Tribunal on such aspect cannot be termed to be perverse or not a plausible view. Arbitral tribunal took into account the recovery made and the notification of the contract as also release of the retention money. Contract allowed the respondent to retain a portion of the bill amount. The finding of the Arbitral Tribunal that, the respondent cannot be saddled with interest on account of alleged

withholding of retention money in respect of the phase 1 part of the work is plausible.

58. The Arbitral Tribunal in its award had discussed at length the terms and conditions of the contract and the factual matrix within which the claims were lodged. It has returned the findings as noted above. These findings returned by the Arbitral Tribunal are plausible.

59. Courts under Sections 34 and 37 of the Act of 1996 are not to sit in appeal over the decision of the Arbitral Tribunal. Courts are not required to re-apprise the evidence and come to a different finding. Courts exercising powers under Section 34 of the Act of 1996 is not required to substitute its views with that of the Arbitral Tribunal when, the view taken by the Arbitral Tribunal is a plausible view.

60. Learned Single Judge has dealt with the rival contentions of the parties raised under Section 34 proceedings. Learned Single Judge in the impugned judgment and order has held that, the award does not suffer from any infirmity requiring interference.

61. We are of the view that the Learned Single Judge has correctly exercised parameters of Section 34 of the Act of 1996 in evaluating the challenge to the award. We do not find any

ground to interfere with the impugned judgment and order or the award.

62. APOT 103 of 2026 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

63. I agree.

[MD. SHABBAR RASHIDI, J.]