

**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

**AO-COM/26/2025
IA No: GA-COM 1/2025
APOT No. 323/2025
(Arising out of A.P. (COM) No. 187/2024)
Old AP No. 340/2020)
MBL INFRASTRUCTURE LIMITED
VS
HOOGHLY RIVER BRIDGES COMMISSIONERS**

For the Appellant : Mr. Ratnanko Banerji, Sr. Adv.
Mr. Shaunak Mitra, Adv.
Ms. Sristi Barman Roy, Adv.
Ms. Pritha Basu, Adv.
Ms. Nairanjana Ghosh, Adv.
Mr. Debartha Chakraborty, Adv.
Mr. Sagar Dutta, Adv.

For the Respondent : Mr. Anirban Ray, Sr. Adv.
Mr. Debanjan Mondal, Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Chayan Gupta, Adv.
Mr. Sandip Dasgupta, Adv.
Mr. Aviroop Mitra, Adv.

Hearing Concluded on : January 30, 2026

Judgement on : March 12, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated November 3, 2025 passed in A. P. (Com) No. 187 of 2024. By the

impugned judgment and order dated November 3, 2025 learned Single Judge has set aside the award dated June 29, 2020.

2. Learned senior advocate appearing for the appellant has submitted that, the respondent challenged the unanimous award dated June 29, 2020 before the learned Single Judge. He has contended that, disputes arose out of a construction contract dated 04th December, 2013 for construction of a basement plus ground plus 5 storied commercial complex compass terminal. He has pointed out that, out of 15 claims, the Arbitral Tribunal had allowed claims 1, 3, 4, 12 (in part), 13 and 15 (in part). The Arbitral Tribunal had rejected the counterclaim of the respondent.

3. Learned senior advocate appearing for the appellant has submitted that, the Arbitral Tribunal found that the termination of the contract was illegal. The Arbitral Tribunal had found the respondent to be in material breach of the contract. The Arbitral Tribunal had found that the respondent granted extensions of time to complete the contract without levy of liquidated damages being conscious of the delay on their part and that, the appellant was not in breach or at fault.

4. Learned senior advocate appearing for the appellant has contended that, the contract contemplated a specific notice to commence. He has contended that, despite no notice to commence having been issued, on the instruction of the respondent, appellant had commenced the work on February 12, 2014. He has pointed out that, the sanctioned building plan was obtained on January 19, 2016. As a result, the respondent had delayed several aspects of the execution of the project including issuance of drawings. He has contended that, non-obtaining of sanctioned building plan had material impact and delayed the implementation of the project. In this regard, he has drawn the attention of the Court to the pleadings made in the statement of claim as also in the rejoinder filed before the Arbitral Tribunal.

5. Learned senior advocate appearing for the appellant has contended that the witness of the respondent was cross-examined on the issue of the sanctioned plan, it's a delay and the impact of such a delay as also delay in issuance of drawings and other aspects.

6. Learned senior advocate appearing for the appellant has contended that the contention of the respondent that the Arbitral Tribunal went into the issue of no legal commencement and no

sanction plan without any issue being raised by the parties is incorrect on the face of the pleadings as also the arguments that were advanced before the Arbitral Tribunal. He has contended that the view taken by the Arbitral Tribunal on the aspect of no sanction plan and its impact was within the contours of the disputes submitted to arbitration. He has contended that, the view taken by the Arbitral Tribunal regarding violation of municipal law was a plausible view and was permissible to be taken by the Arbitral Tribunal.

7. Learned senior advocate appearing for the appellant has referred to the award. He has contended that, all relevant provisions of the contract as also the legal position were considered by the Arbitral Tribunal. He has contended that, since the respondent had extended time for performance without imposing damages for delay, the respondent was estopped from blaming the appellant for any breach of delay. The Arbitral Tribunal had found so by the award. He has referred to the findings of the Arbitral Tribunal in the award in this regard.

8. Learned senior advocate appearing for the appellant has referred to clause 27.2 of the contract which allows extension without imposing liquidated damages in terms of the clause 28

which can only be given when the contractor is not in fault. He has contended that, since the appellant was not at fault, time was extended till June 30, 2017 without imposing any liquidated damages.

9. Learned senior advocate appearing for the appellant has contended that, the respondent illegally terminated the contract on May 17, 2017 before expiry of the extended period. Arbitral Tribunal has rightly taken such factor into consideration. He has referred to the relevant portion of the award in this regard.

10. Learned senior advocate appearing for the appellant has drawn the attention of the Court to the award where the Arbitral Tribunal has taken into consideration that, the appellant did not suspend construction and that, the work was slow down due to the stoppage of the payment of the respondent. The respondent was in breach of its reciprocal obligations and that the respondent had accepted that it was in breach of reciprocal obligations. Arbitral Tribunal had taken into consideration non availability of sanctioned plan before January 19, 2016 which was a breach of the municipal law and consequently the termination was bad.

11. Learned senior advocate appearing for the appellant has referred to various paragraphs of the impugned award relating to delay in payment, admission of default committed by the respondent as also extension of time of the contract without imposing liquidated damages.

12. Learned senior advocate appearing for the appellant has contended that, impugned judgment and order dated January 03, 2025 is perverse. He has contended that there are inherent contradictions in the impugned judgment and award. When the learned Single Judge has held that the respondent consciously extended time for performance without imposing delay damages, there was no ground for the learned Single Judge to interfere as the same was within the jurisdiction of the learned Arbitral Tribunal.

13. Learned senior advocate appearing for the appellant has contended that, in the impugned order the learned Single Judge incorrectly held that the award does not differentiate and proceeds on the basis as if there was no commencement, legal or otherwise and that, there was no discussion or adjudication with regard to the question of neglect, delay and default of either of the parties.

He has contended that, the award in several places found the respondent to be in breach.

14. Learned senior advocate appearing for the appellant has contended that, learned Single Judge incorrectly held that all breaches and counter breaches have to be adjudicated upon. He has contended that, all major and material allegations of breach /counter breach have been dealt with by the impugned award.

15. Learned senior advocate appearing for the respondent has contended that, the learned Single Judge acted within the parameters of Section 34 of the Act of 1996. He has referred to ***(2025) Volume 6 Supreme Court Case 757 (Somdatt Builders-NCC-NEC(JV) vs. National Highways Authority of India and others)*** on the issue of scope of Section 37 of the Act of 1996.

16. Learned senior advocate appearing for the respondent has contended that, the award was contrary to Section 28(3) and 34(2)(b)(ii) read with explanation 1(ii) of the Act of 1996. He has contended that, liquidated damages were allowed contrary to clauses 27.1 and 28 of General Condition of Contracts. He has contended that, the Arbitral Tribunal ignored vital parts of the letters making request for extension of time and letters granting

extension. He has contended that, the respondent categorically recorded its satisfaction and the performance of the appellant in its letter granting extensions. He has referred to the number of times where, extensions were granted.

17. Learned senior advocate appearing for the respondent has contended that, issue of date of commencement of the contract was never raised. He has contended that, in fact, both the parties were *ad idem*, that although notice to commence was not issued, the contract had commenced on and from February 12, 2014. He has contended that, a decision on a dispute not falling within the terms of submission to arbitration was beyond the scope of the arbitration.

18. Learned senior advocate appearing for the respondent has contended that, the Arbitral Tribunal proceeded to negate the various question raised by the parties as to who were really negligent or in default in course of performance of various items of works, erroneously.

19. Learned senior advocate appearing for the respondent has contended that, the finding in the award that, since implementation of the contract did not commence in terms of the

contract, there was no obligation of the appellant to complete the project within the 18 months of the actual start of work is perverse and patently illegal. He has contended that, commencement of work did not require any sanctioned building plan and in any event, the appellant was under obligation to comply with clauses 15, 16, 19 and 32 before obtaining the sanctioned building plan. According to him, such clauses indicate that the commencement of work does not mean actual construction work and that, sanctioned plan was not a *sine qua non*, for commencement of work.

20. Learned senior advocate appearing for the respondent has contended that, the Arbitral Tribunal did not consider the relevant issue and material evidence placed on record. He has contended that, the award was beyond the terms of reference and militates the principle laid down in Section 34(2)(a)(iv) of the Act of 1996.

21. The respondent had issued a notice inviting tender for construction of a modern bus terminus on Grand Trunk Road near ESI hospital with multistoried commercial complex comprising of basement, a ground and five upper floors including sanitary, plumbing and electrical works under Serampore Municipality, Hooghly, West Bengal. The appellant had participated in such

tender process and was successful after technical and financial evaluation. The respondent had issued a letter of acceptance on November 19, 2013. Parties had thereafter executed a formal contract document dated December 04, 2013. The contract document provided that, the work was to be completed within 18 months from the date of commencement.

22. According to him, the date of commencement of the contract was February 12, 2014 with the date of completion being August 11, 2015. According to the respondent, the appellant had sought extension of time to complete the contract without prejudice and that, the respondent granted such extension again without prejudice. According to the respondent, it had never waived the claim for liquidated damages due to the delay occasioned in completion of the contract.

23. According to the respondent, there was inordinate delay in performance of the contract and that, the respondent was compelled to terminate the contract on May 17, 2017 during the pendency of fourth extension. According to the respondent, the appellant had performed only 60% of the contract if value is taken into consideration and 62% of the contract if quantity is taken into consideration.

24. The contract document dated December 04, 2013 had an arbitration clause. Disputes and differences between the parties had been referred to arbitration to an Arbitral Tribunal, consisting of three arbitrators. The Arbitral Tribunal had entered into reference and held 65 meetings between July 27, 2018 and March 13, 2020.

25. In the arbitration proceedings, the appellant had filed statement of claim, respondent's statement of defence with counter claim and the appellant a rejoinder. Parties had disclosed documents.

26. In the arbitration, appellant had examined one witness while, the respondent examined two witnesses.

27. The Arbitral Tribunal had made and published an award dated June 29, 2019. By such award the Arbitral Tribunal had rejected the entire counter claim of the respondent. Arbitral Tribunal had allowed a portion of the claim of the respondent and rejected the other portion.

28. The respondent had filed a petition under Section 34 of the Act of 1996 assailing such part of the award by which, the counter

claim of the respondent was rejected and the claims of the appellant was allowed.

29. By the impugned judgment and order dated November 3, 2025, learned Single Judge has allowed the challenge under Section 34 of the Act of 1996.

30. *Somdatt Builders-NCC-NEC(JV) (supra)* has held that, the scope of interference under Section 37 of the Act of 1996 is limited. Given the limited scope of interference with an Arbitral Tribunal under Section 34 of the Act of 1996, a court exercising jurisdiction under Section 37 of the Act of 1996, is confined to adjudicating as to whether or not the Court acting under Section 34 of the Act of 1996 acted within limited scope of its power.

31. In the facts of the present case, disputes and differences arose between the parties with regard to a building contract. The pleadings of the parties did not raise any issue with regard to the date of commencement of the contract as, in the arbitration proceedings, both parties had accepted that, the work commenced on February 12, 2014. It is the case of the respondent before the Arbitral Tribunal that, it had commenced the work on February

12, 2014, raised and submitted running account bills some of which were paid.

32. The nature of the contract is for construction of a building on an identified land. The appellant was well aware of the situation obtaining at land in question having participated in the tender process. The nature of work under the contract required the appellant to carry out various other works apart from purely constructing the building. In fact, the respondent had commenced work under the contract on February 12, 2014 without the sanctioned building plan.

33. Sanction of the building plan had happened later than the actual commencement of work. In absence of the sanctioned building plan, the appellant had commenced work on February 12, 2014 and as noted above, raised and submitted running account bills. Preparatory work leading to the construction of the building in terms of the sanctioned building plan did not require a sanctioned building plan to commence the same. Parties did not understand the contract to be that the work can only be commenced with the obtaining of the sanctioned building plan. Both parties had worked under the contract prior to the sanctioned building plan being obtained.

34. Learned Arbitral Tribunal had therefore, erred in holding that the date of commencement of the contract was the date of sanctioned building plan and cannot taken as earlier date of February 12, 2014. Such finding of the Arbitral Tribunal is perverse and contrary to the evidence on record. Such finding cannot be sustained by the materials placed on record as no reasonable person can draw such inference from the materials placed on record.

35. Admittedly, there had been delay in execution of the contract. Four extensions had been prayed for and granted. The respondent had sought extension without prejudice and the same were granted also without prejudice. The net effect of the prayers of extension and grant thereof, both without prejudice ought to have been decided upon by the Arbitral Tribunal before fixing the liability *inter se*, between the parties.

36. Arbitral Tribunal had premised the fixation of the responsibility on completely wrong pedestals. The first wrong pedestal is the date of commencement of contract. The other wrong pedestal is the extension of time to complete the contract being done unconditionally. Findings on both such aspect, as discussed by the learned Single Judge are perverse and not drawn out from

the materials placed before the Arbitral Tribunal with no reasonable person being able to draw the inference as recorded by the Arbitral Tribunal.

37. In such circumstances, we find that the learned Single Judge has rightly exercised jurisdiction under section 34 of the Act of 1996. Learned Single Judge has correctly held that the impugned award was vitiated by patent illegality.

38. **AO-COM/26/2025** is dismissed, without any order as to costs.

[DEBANGSU BASAK, J.]

39. I agree.

[MD. SHABBAR RASHIDI, J.]

Later:-

Prayer for stay made on behalf of the appellant is considered and refused.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]