

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AO-COM No. 11 of 2025

Arising out of A.P. (COM) No. 32 of 2024

Neo Metaliks Limited

Vs.

Orrisa Metaliks Private Limited

For the appellant	:	Mr. Pranit Bag, Adv. Mr. Arjun Ray, Adv. Mr. Piyush Agrawal, Adv. Ms. Shrivalli Kajaria, Adv. Ms. Saloni Kumar, Adv.
For the respondent	:	Mr. S. N. Mookherjee, Sr. Adv. Mr. Krishnaraj Thaker, Sr. Adv. Mr. Debrup Bhattacharya, Adv. Mr. Yash Singhi, Adv. Mr. R. N. Ghose, Adv. Ms. Pritha Ghose, Adv. Ms. Shusna Santra, Adv.
Hearing concluded on	:	30.06.2026
Judgment on	:	09.07.2026

Md. Shabbar Rashidi, J.:-

1. The appeal under Section 37 of the Arbitration and Conciliation Act, 1996, at the behest of claimant, is in assailment of judgment and order dated January 6, 2025 passed in A.P.(COM) No. 32 of 2024.
2. By the impugned judgment and order, the learned Single Judge did not find any infirmity with the award passed by learned Arbitrator on October 16, 2023 and consequently, dismissed the application under Section 34 of Arbitration and Conciliation Act, 1996.
3. It was contended by learned advocate for the appellant that the learned Single Judge did not consider that the counter claim allowed in the arbitral proceeding could not have been allowed and was liable to be set aside even if, the appellant was held guilty of breach of the contract as well as orders dated April 28, 2022 and May 20, 2022. It was further contended that the learned Single Judge failed to appreciate that the difference in market price and contract price as on June 14, 2022 were erroneously calculated to ₹ 5,60,00,000/-. The actual difference could not be in excess of ₹ 56,48,200/-.
4. Learned advocate for the appellant further submitted that the learned Single Judge failed to appreciate that claim on account

of difference in market price was withdrawn by the respondent and as such, it could not have been awarded by the learned Arbitrator. Similarly, the claim in respect of port charges and handling charges could not have been allowed as such charges are required to be borne by the recipient of goods. Learned advocate for the appellant submitted that for such reasons, the learned Single Judge ought to have held that the award under challenge contained errors apparent on the face of record sufficient to shock the conscience of the court and was patently perverse. The award was perverse in terms of the provisions of Section 34 (2) (a) (iv) of the Act of 1996.

5. Learned advocate for the appellant further contended that the learned Single Judge failed to appreciate that the learned Arbitrator did not decide the core issue of breach of contract dated February 20, 2022 for which the disputes were referred to arbitration. The learned Arbitrator had no jurisdiction to decide the breach of orders dated April 28, 2022 and May 20, 2022. By the aforesaid orders, neither the time of performance was extended nor did the appellant/claimant relinquish its rights for the breach of the contract. Learned Single Judge wrongly applied the provisions of Section 63 of the Contract Act, 1872 in facts of the case. Both the parties pleaded breach of contract dated February 20, 2022 against each other. Learned Single Judge failed to appreciate that in the

impugned award, damages were awarded for breach of the consent order dated May 20, 2022 and not that for breach of the original contract, which renders the award manifestly perverse containing patent illegality.

6. It was further contended by learned advocate for the appellant that learned Single Judge came to an erroneous finding that the appellant was guilty of breach of order dated May 20, 2022 by not opening the Usance Letter of Credit and that the time of performance of the original contract stood extended by such order in terms of the provisions of Section 63 of the Contract Act, 1872. It was submitted that the learned Trial Judge had committed error in holding that the respondent had complied its obligation under order dated May 20, 2022. The learned Single Judge erred in not interfering with the findings of learned Arbitrator to the effect that request for amendment of Sight Letter of Credit into Usance Letter of Credit was in conformity with the directions of this High Court.

7. Learned advocate for the appellant also argued that the learned Single Judge failed to appreciate that the learned Arbitrator came to an erroneous finding that the appellant did not comply its obligation under order dated May 20, 2022 and illegally terminated the contract and that there was no violation on the part of the respondent. The appellant also claimed that the arguments made on

its behalf were not properly considered by learned Arbitrator and this fact was completely overlooked by learned Single Judge while disposing the application under Section 34 of the Act of 1996.

8. On the other hand, learned senior advocate for the respondent submitted that the appellants never complied with the terms and conditions of the original contract. When the disputes arose between the parties, the parties approached the court by way of various proceedings including civil suit as well as contempt application. With the consent of the parties, the disputes and differences were referred to arbitration. It was also contended that in one of such proceedings, a consent order came to be passed, both parties agreed to carry some obligations. The respondent complied with such obligation whereas, the appellant failed and neglected to perform its obligation for which, the appellant was rightly held by the learned Arbitrator as well as learned Single Judge to be responsible for breach.

9. Learned senior advocate for the respondent further submitted that the fact of breach of original contract was framed as an issue in the arbitration proceeding for adjudication. However, after the consent order dated May 20, 2022, since such order related to the rival obligations under the contract dated February 20, 2022, learned Arbitrator proceeded to decide the issue as the

manifest garb of the breach of such order. By doing so, the learned Arbitrator went on to decide the disputes cropped up between the parties effectively. For such reason, the arbitral award cannot be said to be perverse or against the public policy on the ground that it did not decide the core issue. The learned Single Judge was quite justified in upholding such findings of the learned Arbitrator.

10. It was further contended by learned senior advocate for the respondent that the learned Arbitrator, on the basis of evidence put on record, came to hold that inspite of a number of correspondences and sufficient opportunities provided to it, the appellant failed to perform its obligations under the contract which the appellant further acknowledged in terms of the consent order dated May 20, 2022. Therefore, the learned Single Judge committed no error in affirming such finding of learned Arbitrator holding the appellant responsible for the breach. For the aforesaid reasons, it was argued by learned senior advocate for the respondent, that the impugned judgment and order does not call for any interference and needs to be affirmed.

11. The petitioner agreed to purchase 10,000/- Metric Tons of Lam Coke from the respondent at the price and terms and conditions of the contract entered into between the parties on February 22, 2022. In accordance with the terms of the contract,

the appellant paid a sum of ₹4,49,55,000/- to the respondent on February 22, 2022, being the 10% of the contract amount. The terms of the contract stipulated that the balance amount of consideration money would be paid by the appellant by opening a Letter of Credit, seven days prior to the arrival of the vessel. It was agreed between the parties that the Letter of Credit would be in a mutually agreed format from a first class bank.

12. By an email dated April 1, 2022, the appellant requested the respondent to share the format of the proposed letter of credit. The respondent forwarded the format of letter of credit to the petitioner on April 8, 2022. On April 9, 2022, the appellant suggested certain changes to the format of the letter of credit followed by reminders on April 9, 2022 and April 13, 2022 requesting the respondent to confirm the format of letter of credit. The respondent transferred the 10% of the advance amounting to ₹4,49,55,000/- to the petitioner with intimation to that effect by an email dated April 14, 2022. It was intimated that the advance money was refunded by the respondent on the ground of breach of contract by the appellant in so far as the appellant failed to settle the required letter of credit in terms of the contract. With the return of advance money the respondent also terminated the contract. Pursuant to such termination, by an email dated April 16, 2022, the appellant asked

the respondent the reason of refund of the advance money to the tune of ₹4,49,55,000/-. At the same time the appellant requested the respondent to confirm the format of the draft letter of credit and the date of arrival of the vessel in order to enable the appellant to open the letter of credit and other facilities in terms of the contract. Such communication by the appellant was followed by a reminder on April 18, 2022.

13. The materials on record also reveals that the appellant filed a suit being T. S. No. 519 of 2022 on April 25, 2022 seeking specific performance of the contract with a direction upon the respondent for the delivery of 10,000 MT of Lam Coke together with other ancillary reliefs. The appellant also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. By an order passed on April 25, 2022, the respondent was restrained from dealing with disposing of or alienating or encumbering or creating any third party interest and from removing the goods from the vessel. The respondent was also restrained from making over the goods to any third party or restoring the same in the warehouse or precincts of any third party until May 21, 2022.

14. Being aggrieved with such restraining order dated April 25, 2022, the respondent carried an appeal before a Division Bench of this Hon'ble Court in the form of FMAT No. 137 of 2022 coupled

with an application being CAN No. 1 of 2022 praying for the stay of the operation of order dated April 25, 2022. An interim order was passed by the Hon'ble Division Bench granting liberty to the respondent to remove entire consignment upon returning 10,000 MT of Lam Coke. Such appeal and the application filed by the respondent were disposed of by a consent order dated April 28, 2022. In compliance with the said order, the appellant paid a sum of ₹44,955,000/- to the respondent on April 30, 2022 towards 10% advance payment. The appellant also sent an email to the respondent recording payment details and seeking confirmation of draft letter of credit. By an email dated May 2, 2022, the respondent acknowledged the receipt of 10% advance payment and also forwarded the revised draft letter of credit to the petitioner requesting the appellant to open the letter of credit.

15. The appellant then sent another email to the respondent on May 2, 2022 indicating that as per the contract, the sale was to be effected on the basis of High Sea Sale whereas, since the goods had already arrived, unloaded from the vessel and shifted to the port, the sale was to be made as GST sale. The appellant also specified in such email, that since the original agreement contemplated High Sea Sale, the banker was requiring an addendum to such agreement dated February 22, 2022 making provisions for GST sale. The

appellant also informed the respondent that it was agreeable to open Usance Letter of Credit or a Sight Letter of Credit subject to negotiations over GST sale and the port charges would be included in the invoice. Such communication by the appellant was duly replied to by the respondent by an email dated May 4, 2022 expressing its willingness to supply the agreed amount of Lam Coke. The respondent also indicated that the original agreement already contained provisions for GST sale and that the Letter of Credit was to include the payable GST anyway in terms of the original agreement. As such, no amendment in the original agreement was required.

16. The appellant also indicated to the respondent that the draft Letter of Credit forwarded by the respondent on May 2, 2022 was defective and incomplete. The appellant declared that it was proceeding to open Sight Letter of Credit. On May 6, 2022, the appellant sent two draft Letters of Credit which the respondent discarded by an email dated May 6, 2022 itself citing certain anomalies therein that is to say, the payment was to be made through Letter of Credit based on invoice for the remaining quantity of 9,000 MT of Lam Coke, at a time, instead of payments against material movement and that the respondent would not be able to issue lorry receipts. It was alleged that the demand of the

respondent for issuance of Letter of Credit for the entire consideration money of the balance quantity of consignment, was unjust and beyond the scope of the original contract. On the contrary, the respondent's contention was that there was no reference of phase wise payment of consideration money in the contract. However, the respondent expressed its willingness to supply the entire quantity of goods against payments in terms of the contract.

17. On May 12, 2022, the appellant forwarded the bank guarantee to the respondent in terms of order dated April 28, 2022. The appellant also filed a contempt application against the respondent for non-compliance of order dated April 28, 2022 having not allowed the appellant to lift 10,000 MT of Lam Coke. At the same time the appellant also applied before the Hon'ble Division Bench seeking modification of the order dated April 28, 2022, in so far as it related to direction upon the appellant to furnish bank guarantee of ₹5,00,00,000/-. Such application filed by the appellant was disposed of by a consent order passed on May 20, 2022 which read as follows:

“By consent of the parties, the application for contempt being CPAN 457 of 2022 and the application for modification being CAN 2 of 2022 are taken up together and disposed of on the following agreed terms:

1. The applicant will amend the Sight LC into a Usance LC upon a written request letter from the appellant within 7 working days for the balance contract value against following documents to be provided by the appellant:

- a. GST Sale Invoice for 10,000 MT;
- b. Delivery Order for supply of 10,000 MT of Coke from a single port plot in favour of the applicant with a copy to the Handling Agent, Customs Authorities and the Port Authorities.
- c. Confirmation Letter to all concerned authorities stating that the applicant is authorized to lift the 10,000 MT of Coke.

2. The applicant shall be liable for and shall make payment of Port Handling charges and other charges in terms of the contract.

3. The amended LC will be discounted by the applicant through the applicant's bankers under the applicant's limit within another 3 days after submission of originals of (a) bill of exchange, (b) GST Sale Invoice, (c) Irrevocable Delivery Order and (d) Confirmation Letter as mentioned in 1(c) above by the appellant to the banker of the applicants. It is pertinent to add that the discounting/interest and incidental charges will be borne by the applicant. The applicant will submit proof of dispatch documents to the bankers from time to time.

4. The appellant undertakes to start giving delivery of the 10,000 MT of materials to the applicant immediately after receiving the balance consideration through the said Usance LC without any delay. The

appellant undertakes to provide full co-operation and to ensure that the materials are delivered.

5. If within June 13, 2022 the appellant does not receive the entire balance consideration for the goods, it would be free to sale and deal with the 10,000 MT of LAM Coke and the parties would then make all claims in the arbitration.

6. The undertakings filed by the respective parties shall be exchanged and the original bank guarantee furnished by the applicant in terms of the order dated April 28, 2022 be handed over to the appellant within 7 days from date. The bank guarantee shall be invoked in terms of the order dated April 28, 2022 only after giving 14 days' prior notice in writing to be given to the applicant in this regard.

7. However, all issues are left open to be raised before the learned Arbitrator. There will be no order as to costs."

18. By a letter issued through its advocate, the appellant invited the respondent to send the written request for amendment of Letter of Credit as contemplated in the order dated May 20, 2022. The respondent accordingly responded to such letter by an email requiring modification of the Letter of Credit. By a subsequent email dated May 24, 2022 the appellant rejected the request on the ground that the same was not in conformity with the order dated May 20, 2022. According to the appellant, the said order only contemplated written request for amendment of Letter of Credit whereas, contents of it were not negotiable. Such communication by

the appellant was responded by the respondent by an email dated May 25, 2022. By an email dated 26th May, 2022, the petitioner intimated the respondent that the Letter of Credit opened on 6th May, 2022 would be amended to a Usance Letter of Credit upon receipt of a mail from the respondent in the format given in the email.

19. Accordingly, the respondent provided the petitioner with the debit note and other supporting documents and requested the petitioner to make payment towards port handling charges and other charges. The respondent also called upon the petitioner to amend the Letter of Credit and make provisions therein for discounting the Letter of Credit within three days after submissions of original documents. The respondent has also requested the petitioner to make payment of the port handling charges and other charges. Several emails were exchanged between the parties. The respondent claimed incorporation of terms of discounting of Letter of Credit within 3 days of submission of original documents. It also claimed the port charges and handling charges. The respondent through an email dated 30th May, 2022 informed the petitioner that the respondent time and again by series of email messages requested incorporation of necessary amendments/ modifications in

the Letter of Credit including form Sight Letter of Credit to Usance Letter of Credit.

20. Ultimately, the petitioner by an email dated 31st May, 2022 informed the respondent that the petitioner had decided to procure LAM Coke from open market and demanded for refund of ₹4,49,55,000/-. In reply, the respondent claimed that the petitioner was guilty of violation of the order passed by the Hon'ble Court dated 20th May, 2022 by not amending the Sight Letter of Credit to Usance Letter of Credit inspite of repeated requests from the respondent. It was also claimed that the appellant also did not pay the port handling charges and other charges and failed to make provisions for discounting the amended Letter of Credit within specified time and did not hand over the original bank guarantee to the respondent.

21. The appellant filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 against the respondent on May 31, 2022 praying for interim reliefs. On 2nd June, 2022, the appellant had also filed a contempt application before the Hon'ble Court being CPAN No. 491 of 2022 against the respondent for violation of the orders dated 28th April, 2022 and 20th May, 2022. Similarly, the respondent also filed contempt application against the

appellant on July 16, 2022 alleging violation of the selfsame orders passed by the Hon'ble Division Bench.

22. In the meantime, the parties put their respective statement of claim and statement of defence coupled with counter claim in the arbitration proceeding. The appellant also filed an application under Section 31 (6) of the Act of 1996; however, the same was never pressed by the appellant. Incidentally, the application filed by the appellant under Section 17 of the Act was disallowed.

23. The matter revolves around the allegations of breach of orders dated April 28, 2022 in FMAT 137 of 2022 and May 20, 2022 passed in CPAN 457 of 2022. We have noted the order dated May 20, 2022 hereinbefore. It would be apposite to set out the order dated April 28, 2022 for proper appreciation. The said order reads, thus:

“By consent of the parties the appeal and application are taken up together and disposed of by this order.

Mr. Kishore Dutta, learned senior counsel representing the appellant and Mr. Jisnu Saha, learned senior counsel representing the respondent no. 1/plaintiff upon instruction have agreed to disposal of the appeal on the following terms:-

- i) The respondent no. 1 will pay Rs.4, 49, 55,000/- being 10% of the contract value, in terms of the Agreement dated 22.2.2022 to the appellant within April 30, 2022.*

ii) The parties shall take necessary steps for finalization of the L/C within a period of three days from date. The respondent shall make over payment of the balance amount of the contract value being Rs.40, 50, 45,000/- through the L/C in accordance with the contract within 3 days thereafter. The respondent no. 1 shall be at liberty to lift the 10000MT of LAM Coke thereafter.

Mr. Kishore Dutta, learned senior counsel representing the appellant, has suggested that in view of the fact that the appellant would be required to supply 10000MT materials at a reduced price some protection in the form of bank guarantee or otherwise may be extended to the appellant.

Mr. Jisnu Saha, learned senior counsel representing the respondent no. 1/plaintiff, submits that the refusal to deliver the goods, after the agreement has been concluded, was illegal and unfair and in the event the suit succeeds the appellant would have no claim against the plaintiff/respondent no. 1.

In the plaint it is alleged that the current market value of the materials would be Rs.67 crores and by reason of cancellation of the contract the plaintiff/respondent no. 1 would suffer damage to the extent of Rs. 22 crores approximately.

In order to balance the equities, keeping in mind that in the event the appellant succeeds, they would be entitled to the differential amount, we direct the plaintiff/respondent no. 1 to furnish an unconditional bank guarantee in favour of the appellant for sum of Rs. 5 crores within two weeks from date initially for a period of one year and in the event the arbitration proceeding is not concluded

within the aforesaid period to keep it renewed till an award is passed.

In addition to the aforesaid, the plaintiff shall also file an affidavit of undertaking to be accompanied by the board resolution of the plaintiff with the Registrar General on or before 3rd May, 2022 to the effect that in the event an award is passed against the plaintiff and ultimately sustained, the plaintiff would pay interest at the rate of 18% p.a from 25th April, 2022 till the realisation of the amount. The appellant shall also file an affidavit of undertaking to be accompanied by the board resolution of the appellant with the Registrar General on or before 3rd May, 2022 to the effect that in the event an award is passed against the appellant, the appellant shall pay interest at the rate of 18% p.a from 25th April, 2022 till the realisation of the amount.

The aforesaid direction shall not prevent the parties to challenge the award if so advised in accordance with law.

The undertakings are without prejudice to the rights and contentions of the parties in the arbitration proceeding.

In view of the existence of the arbitration clause in the contract, the parties through their learned senior advocates have agreed to refer their disputes and differences to arbitration and have requested this court to appoint an arbitrator.

On the basis of such request, by consent of the parties we appoint Hon'ble Mr. Justice Bhaskar Bhattacharyya, former Chief Justice of Gujrat High Court, as an arbitrator to decide the disputes and differences of the appellant and the plaintiff/respondent no. 1.

We request the learned arbitrator to fix his remuneration at the first sitting of arbitration.

The parties shall bear all charges and expenses including the remuneration of the learned arbitrator in equal measure. This, however, shall not restrict the power of the learned arbitrator exercising any of the power under Section 31A of the Arbitration and Conciliation Act, 1996.

We request the learned arbitrator to dispose of the reference as expeditiously as possible.

Since we are of the view that the respondent nos. 2 and 3 are not necessary parties, their representation before the arbitrator is not necessary.

The suit pending before the trial court shall remain permanently stayed.

In view of the above, FMAT 137 of 2022 is disposed of.

In view of the disposal of the appeal, CAN 1 of 2022 is accordingly disposed of.”

24. So far as the allegations regarding non-consideration of core issues by the learned Arbitrator is concerned, the learned Single Judge, on the basis of materials placed before the court held that in the facts of the case, it was not justified to come to a conclusion that the learned Arbitrator did not decide the main issues. The learned Single Judge, in this regard, noted to the following:

“64. The Learned Arbitrator while deciding the issues held that the first two issues framed by the Tribunal have lost their significance after the passing of second order and need not to be decided in this proceeding. In place of those, the issue no.3 framed in this proceeding i.e. (3)“Whether the

terms of the consent order breached by any of the parties and if so, who has committed breach?”

.....

.....

“In the present case, the main contention of the petitioner that the Learned Arbitrator has not decided the first issue whether there was breach of the terms of the contract dated 22nd February, 2022. By the consent order dated 20th May, 2022 both the parties agreed with regard to the terms of payment and delivery of goods. Clause 10 of the Contract provides for opening of Letter of Credit of the balance payment, issuance of delivery order upon receipt of full payment and other conditions. The Learned Arbitrator has decided issue no.3 with regard to any breach of the consent order dated 20th May, 2022. The order dated 20th May, 2022, is directly connected with Clause 10 of the Agreement and the Hon’ble Court had provided for working arrangement for payment and delivery of the goods. Thus this Court finds that the issue decided by the Learned Arbitrator squarely covered the agreement dated 22nd February, 2022 and thus it cannot be said that the Learned Arbitrator fails to decide the main issue with respect of the agreement dated 22nd February, 2022.”

25. We have noted hereinbefore, the several correspondences exchanged between the parties in respect of mutual obligations in the contract. It was noted by learned Single Judge that learned Arbitrator took note of the correspondences and came to a conclusion that the appellant was responsible for the breach.

Learned Single Judge, in the impugned judgment and order held that,

“62. After the order dated 20th May, 2022, the respondent by an email dated 23rd May, 2022 requested the learned advocate for the petitioner to advise the petitioner to amend the Letter of Credit in terms of the order dated 20th May, 2022. Thereafter, several correspondences were made between the parties but the Letter of Credit was not finalized and by an email dated 31st May, 2022, the petitioner informed the respondent that the petitioner is now proceeding to procure the materials from the market for which the respondent would be liable for all costs and consequences, damages suffered and to be suffered by the petitioner by the illegal act and conduct and breach of the contract. By the said email, the petitioner called upon the respondent to refund the sum of Rs. 4,49,55,000/- being the 10% of the consideration value remitted to the respondent on 30th April, 2022 and requested for consent letter for closure and release of the Letters of Credit dated 6th May, 2022 and the Bank Guarantee dated 12th May, 2022.

63. The Arbitrator considering the correspondences between the parties on and from 23rd May, 2022 till 31st May, 2022 come the conclusion that the respondent has complied with its obligation in terms of the order dated 20th May, 2022 by the email dated 23rd May, 2022. The Arbitrator further held that request for amending the Sight Letter of Credit into a Usance Letter of Credit is in conformity with the direction of the Hon’ble Court but the petitioner has not complied with its obligation in terms of the order dated 20th May, 2022 and on the other hand has illegally terminated the contract

though there was no violation on the part of the respondent.”

26. According to the original contract dated February 22, 2022, the parties agreed to the following payment terms, that is to say:

“10. Payment:

10% advance amount in INR to be paid by buyer to the seller latest by 22-feb-2022 and balance amount by sight/ usance confirmed, irrevocable lc to be opened before 7 days prior to arrival of the vessel. Seller will make high seas sales invoice and agreements upon issue of the bill of lading. Opening of lc within the stipulated time and in a mutually agreed format from a first class bank any default in the aforesaid clause shall give right to the seller, inter alia, to terminate the contract and proceed for recovery of damages. Delivery order will be issued upon receipt of the full payment of the material value from the buyer as per point no. 4 and 6 above. All other relevant documents required by the buyer will be provided accordingly to the extent reasonable.

11. Documentation:

Seller to provide the following documents

- A. CEPA certificate in original (for claiming nil basic custom duty). In case the same is provided by the exporter, otherwise the same will be local sales under gst laws;*
- B. Endorsed bill of lading;*
- C. Copy of certificate of weight;*
- D. Copy of certificate of quality;*
- E. High Sea Sale Agreement;*
- F. High Sea Sale Invoice;*

G. Any other document as required by custom Haldia Port/GST Dept./Bank for LC.

12. Documentation required:

Part A: bill of exchange for 100 pct of invoice beneficiary's signed commercial invoice in 3 sets stating the full invoice valueless advance, if any photocopy of high sea sale agreement

Part B: Debit note for actual demurrage amount lay time calculation

13. Purchase Terms:

In case seller is unable to sale the met coke (due to difficulty avilement of zero duty based of CEPF certificates by the exporter, seller should execute deal by making GST sells invoice (rate as per point No. 3 & 5) of Met Coke. Buyer will reimburse actuals following expenses based on prorate quantity basis.

- a. All payment made to port;*
- b. All payments made to cha for handling the cargo and loading on the trucks."*

27. By order dated May 20, 2022, the parties were expected to convert the Sight Letter of Credit into one as Usance Letter of Credit upon request by the respondent. As noted above, it was noted by learned Single Judge that such request was duly made by the respondent through email correspondences. However, the same was never carried out by the appellant. It went on killing time on one or the other pretext and therefore the appellant was held to be guilty for the breach. It is admitted position that the respondent, on every

occasion, expressed its readiness and willingness to supply the agreed quantity of goods.

28. As regards the reliefs granted by learned Arbitrator in the form of damages and rejection of the claim of the appellant, the learned Single Judge noted the claim of the appellant, objections and counter claim preferred by the respondent and also the findings of learned Arbitrator on such issues and held to the following,

“68. Learned Arbitrator categorically held that the petitioner was fully conscious that on the consent of the parties, the respondent was restrained from disposing of the goods till 13th June, 2022, it could not before that day terminate the contract when the price of goods were falling in the market from the contract price and abandon its prayer for Specific Performance. Learned Arbitrator found that the petitioner is guilty of non-compliance of the order dated 20th May, 2022 and it is the duty of the Arbitrator to restore to the respondent, the loss suffered by it for the order of injunction imposed against the respondent. The Arbitrator also held that the litigant cannot take benefit of the interim order after having lost on merit and the benefit so taken must be restored to the other party who suffered such interim order.”

69. In the present case while ascertain the damage suffered by the respondent, the Learned Arbitrator has decided as follows:

“54. After taking into consideration the materials on record showing the admitted rate of the goods in question as would appear from the uncontroverted documents marked as GG, HH, II, JJ, of the SOD, and also the consent order of

the Hon'ble High Court dated 28th April, 2022 which is marked as FF of the SOD, the Respondent has been able to successfully establish the following facts:

A. The market price of the goods in question on April 25, 2022 was Rs. 52,033/ (Rupees Fifty two thousand and thirty three only) (exclusive of handling and other charges) per MT and the Respondent is entitled to get damages for being unable to sell the goods at such price due to the order of injunction passed against it on the representation of the Claimant that it would purchase the goods at the contractual rate of Rs. 46000/- per MT.

B. The contract price of the said goods being Rs. 46,433/- Per MT and the fact that the Respondent could have sold the said goods even at the rate of Rs. 52,033/- (Rupees Fifty two thousand and thirty three only) (exclusive of handling and other charges) per MT, it was therefore entitled to the difference, being Rs. 5,600/- per MT. Consequently, it could receive an additional amount of Rs. 5,60,00,000/- (Rupees Five Crore and Sixty lakh only), being the difference in the price of the said 10,000 MT of goods, the total subject matter of the aforesaid contract,

C. The Respondent is also entitled to port charges in respect of the said consignment for the period April 21, 2022 to June 13, 2022, the date till which it was restrained by the order of injunction by virtue of the second consent order dated 20th May, 2023, amounting to Rs.18,12,400/-. The claimant is also bound to compensate the respondent for the handling charges which the Respondent has incurred because of the claimant's failure to take delivery of the goods. Consequently, the Respondent is entitled to a sum of Rs. 29,37,972.08/- on account of handling charges from the claimant as would appear from the uncontroverted Bills

and/or documents in support of such claims which are collectively annexed and marked "HH" to the SOD

D. The Respondent has paid the supplier / seller of the said consignment, viz. Noble Resources, a sum of Rs. 59,75,04,799.65/- for the quantity of 11,500 MT on May 13, 2022 as would appear from the document marked II to the SOD which remains uncontroverted. In terms of the said contract, the Respondent could have received the contract value of the goods amounting to the sum of Rs.46, 00, 00,000/- through letter of credit which the claimant was obliged to establish on or before 14th April 2022. The Respondent would have received the value of the letter of credit in the minimum sum of Rs. 56, 00, 00,000/- latest by 30th April 2022. However, the respondent has been deprived of the price of goods by Claimant in the facts and circumstances stated in paragraph 3 of the foregoing statement of defence till 13th June 2022. The Respondent is, therefore, entitled to and claims interest at 18% per annum on Rs. 11, 80, 00,000/- from 1st May 2022 till 13th June 2022.

E. As would appear from the documents marked as JJ to the SOD, the market price of the goods on 14th June was Rs. 45780.13/- per MT. The Respondent is, accordingly, entitled to the difference between market price of the goods on 14th June, 2022 and the contract price being the sum of Rs.21,98,700/- (Rs.46,00,00,000/- minus Rs.457,801,300/- = Rs.21,98,700).”

29. In consideration of the aforesaid facts and circumstances of the case and materials on record the learned Single Judge refused to interfere with impugned arbitral award dated October 16, 2023. It

is trite law that the scope of intervention of the Court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act.

30. Award dated October 16, 2023 contains reasons. Learned Arbitrator considered all contentions raised by the parties, the materials placed before him. He pronounced on the issues raised. The decision of the Arbitrator as recorded in the award dated October 16, 2023 cannot be said to be perverse.

31. Likewise, the learned Single Judge dealt with the contentions raised before it in the impugned judgment and order dated January 6, 2025. Appellant did not establish the impugned judgment and order dated January 6, 2025 to be perverse. The appellant did not establish the award dated October 16, 2023 to suffer from any patent illegality.

32. In view of the discussions made hereinbefore as well as in consideration of the provisions of Section 37 of the Arbitration and Conciliation Act, 1996, we are not in a position to arrive at a conclusion that in passing the impugned judgment and order, the learned Single Judge failed to exercise its jurisdiction or exceeded the jurisdiction vested in it under Section 34 of the Act of 1996.

33. Consequently, the instant appeal being AO-COM 11 of 2025 stands dismissed, however, there will be no order as to costs.

34. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

35. I agree.

[DEBANGSU BASAK, J.]