



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Arb.A. No. 1 of 2026 with
MC (Arb.A) No. 2 of 2026

Date of Decision: 15.07.2026

Union of India
Through the Engineer-in-Charge,
Meghalaya-II, CPWD, Shillong

..... Appellant

-Vs-

M/s. Rajnish Infratech OPC Pvt. Ltd
E 3/1, Top Floor,
Jhandewalan Extension,
New Delhi 110055

..... Respondent

Coram:

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

Appearance:

For the Petitioner/Appellant(s)	:	Dr. N. Mozika, DSGI with Ms. K. Gurung, Adv.
For the Respondent(s)	:	Mr. S. Yadav, Adv with Mr. D. Das, Adv.



Per W. Diengdoh, (J):

JUDGMENT AND ORDER

1. The background factual situation of this case is that for the purpose of construction of the Administrative Building at NEIAH, New Shillong, the appellant/Union of India has floated a tender being NIT No. 25/NIT/CE/EE/MEGH-II/2023-24 at an estimated cost of ₹ 24,94,17,881/- (Rupees twenty-four crores, ninety-four lakhs, seventeen thousand, eight hundred eighty-one) only. The respondent participated in the bid process and emerged as the lowest bidder (L-1), the appellant herein then issued the Letter of Acceptance dated 23.02.2024, for which the respondent was requested to furnish the Performance Guarantee for an amount of ₹ 1,18,00,587/- (Rupees one crore, eighteen lakhs, five hundred eighty-seven) only, which was done so in the form of an FDR.

2. Thereafter, the work was allotted to the respondent vide letter of Award dated 06.03.2024 and a Contract Agreement was also signed vide Agreement No. 21/CE/EE/Megh-II/2023-24 for a total contract value of ₹ 23,60,11,736/- (Rupees twenty-three crores, sixty lakhs, eleven thousand, seven hundred thirty-six) only. The start date for the contract was 04.03.2024 and the scheduled date for completion was 03.09.2025.

3. It is also on record that as per the terms of the contract, the respondent



was required to submit certain documents including Trading Licence issued to Non-Tribal Contractors by the Khasi Hills Autonomous District Council (KHADC). This is in terms of Clause X of the NIT. The period required to receive the said Trading Licence was one month from the date of receipt of the contract, failing which the respondent will be liable for any action by the CPWD or the KHADC.

4. Evidently, the respondent failed to submit several documents required, for which the appellant caused issuance of a letter dated 12.04.2024 with a condition that if the Firm failed to produce such documents and show progress of the work, suitable action under relevant clauses of the contract will be taken against it. Another such letter was issued on 25.04.2024 prompting a response from the respondent vide letter dated 30.04.2024, to say that, though, the application for the Trading Licence was made, however, due to the implementation of the Model Code of Conduct, no fresh Trading Licence was issued by the District Council.

5. Eventually, vide show cause notice dated 09.05,2024, the appellant then put to notice to the respondent as to why action under Clause 5 of the Agreement should not be taken against the respondent, this step was to be taken in case no cause is shown or, if shown, that it should be satisfactory. In response, the respondent in its reply dated 15.05.2024 has stated that they are trying to get the said Trading Licence from the KHADC for in the absence of the Trading Licence, no materials



could be procured as no GST registration could be obtained without the Trading Licence.

6. Finally, after about three months have elapsed, the respondent having failed to obtained the said Trading Licence, the appellant vide letter dated 24.06.2024 determined the Contract and the Performance Guarantee stands forfeited.

7. The respondent/Firm then raised the matter in Arbitration, and on being so referred, Shri Sudhir Kumar, Former ADG, CPWD was appointed as the Sole Arbitrator. The respondent/Firm raised 6 Claims, while the appellant/Petitioner raised 1 Counter-Claim, the same being the following:

Claim No. 1: Declaring the action taken under clause 3 of the agreement to be null and void.

Claim No. 2: Recovery of PG forfeited to a tune of Rs. 1,18,00,587/-.

Claim No. 3: Claim for losses and damages of Rs. 25,00,000/-.

Claim No. 4: Claim for loss of profit @ 15% on the tender value.

Claim No. 5: Interest on all of the above claims @18% from the date of cause of action till the final payment is made.

Claim No. 6: All the expenses which are being incurred.



Claim No. 7: Cost of litigation.

The Counter-Claim raised by the respondent herein before the Arbitrator is only with regard to the Cost of arbitration for which an amount of ₹ 7,80,000/- was claimed.

8. After the arbitration proceedings came to an end, the Arbitrator has passed the Award dated 26.12.2024 and has dealt with the respective claims as follows:

Claim No.	Particulars of Claim in brief	Claim Amount	Award Amount
1	Declaring the action taken under clause 3 of the agreement to be null and void	-	Action under clause 5 declared invalid.
2	Recovery of PG forfeited	Rs. 1,18,00,587/-	PG (Rs. 1,18,00,587/- in the shape of FDR) to be released
3	Claim for losses and damages	Rs. 25,00,000/-	NIL
4	Claim for loss of profit @7.5% on the tender value.	Rs 1,77,00,880/-	NIL
5	Interest on all of the above claims @18% from the date of cause of action till the final payment Interest awarded-		



	(i) Pre-award interest: There shall not be any pre-award interest (ii) Post-award interest: No post-award interest shall be payable if the award amount; i.e. the PG (in the shape of FDR amounting to Rs. 1,18,00,587/-) is released to the claimant contractor on or before 25.01 2025. Failing this, the PG amount (Rs 1,18,00,587/-) shall bear post-award simple interest @2% per annum w.e.f. 27.12.2024 till the date of actual payment.		
6	On account of expenses Incurred	Not specified	Rs. 3,00,000/-
7.	On account of cost of litigation		
CC-1	On account of cost of arbitration	7,80,000/-	NIL

9. Being aggrieved and dissatisfied with the said Award of the learned Arbitrator, the appellant has approached the Commercial Court at Shillong with Commercial Arbitration No. 13 of 2025 under the provision of Section 34 of the



Arbitration and Conciliation Act, 1996, assailing the said Award dated 26.12.2024.

10. The learned District Judge after hearing the parties, has disposed of the said application vide the impugned order dated 03.02.2026, effectively dismissed the challenge to the said Arbitral Award, that is, that the said Award stands justified.

11. Once again, being aggrieved by the said impugned order passed by the learned Commercial Court, the appellant has now approached this Court with this instant appeal under Section 37 of the said Arbitration and Conciliation Act, seeking to set aside and quash the same.

12. Dr. N. Mozika, learned DSGI in his argument has submitted that since the respondent/Firm has failed to comply with the terms of the contract as far as commencement of the work is concerned, the fact being that the Firm failed to procure the Non-Trading Licence to enable it to obtain the labour license and the GST registration, therefore, on show cause notice being issued, Clause 5 of the Contract was invoked.

13. It is further submitted that as per Clause 5, which was amended on 08.12.2023, in case of default even after the time period specified in the notice in writing by the Engineer-in-Charge, then the performance guarantee shall be forfeited by the Engineer-in-Charge which was done so.



14. In further clarification of what Clause 5 entails, the learned DSGI has submitted that the unamended clause would be implemented in the following sequence: first the default, then forfeiture of performance guarantee. On the contrary, Clause 3 of the contract stipulates that on non-commencement of the work, the contract will firstly be determined or terminated, then comes the forfeiture of the performance guarantee.

15. As to the amended Clause 5, the learned DSGI has submitted that in view of the said amendment, the sequence will now be as follows: first the default, then forfeiture of the performance guarantee and finally, the determination or termination of the contract. This, according to the learned DSGI was not considered by the learned Arbitrator, thereby, leading to the wrong conclusion made in the award.

16. However, the learned DSGI has fairly submitted that the amended Clause 5 was never brought to the notice of the learned Arbitrator in the arbitration proceedings.

17. That the learned Commercial Court has failed to appreciate the fact that the learned Arbitrator, while coming to the finding that the final action of the respondent-EE on determination of the contract under clause 5/GCC is not in accordance with the contractual provisions, and further, that the final action travels beyond the bounds of show cause notice issued, therefore, the action is



impermissible and without jurisdiction, and to that extent, the action taken under clause 5/GCC is invalid, such finding is incorrect and not based on the terms of the NIT and the contract, contends the learned DSGI. As such, it is prayed that the impugned judgment dated 03.02.2026 be set aside and quashed.

18. Mr. S. Yadav, learned counsel for the respondent has submitted that what is to be looked into in this matter is whether the appellant has applied the proper clause of the contract while determining the contract of the respondent. Admittedly, the appellant has invoked Clause 5 which is under the heading “*Time and extension for delay*” as such, this clause speaks only about extension of time if a contractor commits defaults in commencing the execution of the work in time, and on such default the performance guarantee shall be forfeited. However, Clause 3 of the said contract speaks of when the contract can be determined and under this Clause a number of cases has been cited, for example, sub-Clause (ii) speaks about the default of the contractor to proceed with the work, for which under sub-Clause (xii)(a) the Engineer in-Charge can determine or terminate the contract and upon such determination the performance guarantee shall stands forfeited.

19. The learned counsel has further submitted that the appellant has resorted to the amended Clause 5 to determine the contract, which clause was never brought to the notice of the learned Arbitrator, as such, the decision of the learned Arbitrator



being fair and just, the fact that the same has been upheld by the learned Commercial Court in the said application under Section 34 of the Act also stands justified submits the learned counsel.

20. Again, the learned counsel has submitted that the scope of interference by this Court as far as Section 37 of the Arbitration Act is very limited, the case of **MMTC Limited v. M/s Vedanta Limited, (2019) 4 SCC 163** has been cited to support this contention at para 14.

21. Upon hearing the learned counsels for the parties, facts of the case duly noted hereinabove, what is understood is that after the contract was determined and the performance guarantee forfeited, the respondent referred the matter for arbitration and about six claims were presented before the learned Arbitrator. Correspondingly, the appellant herein has also made a counter claim of Rs. 7,80,000/- for cost of Arbitration.

22. As has been submitted, the learned Arbitrator has disposed of the matter and relevantly on claim No. 2 that is, recovery of PG forfeited, carrying an amount of Rs. 1,18,00,587/-, the same is directed to be released. Against claim No. 6 on account of expenses incurred, an award of Rs. 3,00,000/-. The counter claim made by the appellant herein as respondent in the arbitral proceedings was also not allowed by the learned Arbitrator.



23. Importantly, what the learned Arbitrator has concluded is that there is no ground for the appellant to invoke Clause 5 (supra), the findings in this regard being that the final action of the respondent-EE on determining the contract under Clause 5/GCC is not in accordance with the contractual provision. The learned Commercial Court dealing with the Section 34 application has also concurred with this finding, inasmuch as, the same was not disturbed.

24. It is also noticed that as per Clause 3 of the General Condition of Contract (GCC), failure of the contractor to proceed with the work will result in the same to be determined and thereafter the Performance Guarantee will be forfeited. Whereas, as per Clause 5 of the said GCC in case of default by the contractor, the result would be forfeiture of the performance guarantee. However, vide initial impugned action of the Engineering-in-Charge vide notification dated 24.06.2024, the allegedly by resorting to Clause 5 (supra), the Engineer-in-Charge has determined the contract, and upon such determination, the performance guarantee stands forfeited. Thus, it is apparent that a wrong provision of the GCC was invoked by the Engineer-in-Charge which was noticed by the learned Arbitrator, the same being reflected in the Arbitral Award. This is a finding on facts which cannot be gone into by this Court under Section 37 of the Arbitration Act. The fact that the learned Commercial Court has also concurred with such findings, therefore, a concurrent finding of facts cannot be



easily overturned by a superior court.

25. In the case of MMTC Limited (*supra*), at para 14 of the same, the Supreme Court has held as follows:

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

26. It may not be out of place to refer to the well settled law as far as exercise of jurisdiction under Section 37 is concerned. In the case of **Haryana Tourism Limited v. Kandhari Beverages Limited**, (2022) 3 SCC 237 at para 8 and 9. It was held as follows:

“8. So far as the impugned judgment and order, Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233 passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the



Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order, *Kandhari Beverages Ltd. v. Haryana Tourism Ltd.*, 2018 SCC OnLine P&H 3233 passed by the High Court is hence not sustainable.”

27. In the case of **Punjab State Civil Supplies Corporation Limited and Anr. v. Sanman Rice Mills and Ors.** reported in 2024 SCC Online SC 2632 at para 20, it was observed as follows:

“20. In view of the above position in law on the subject, the scope of the 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. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It



cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.”

28. In view of the above findings and observations, we are of the view that the impugned judgment passed by the learned Commercial Court, Shillong cannot be faulted and the same is hereby upheld.

29. As has been awarded by the learned Arbitrator, the appellant herein is directed to satisfy the award and to make all necessary payments to the respondent within 4(four) weeks’ time, particularly as regard Claim No. 2 and Claim No. 6 therein.

30. This appeal being devoid of merits is hereby rejected and accordingly disposed of. No Costs.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice