

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Case:- Arb P No. 54/2023  
CM No. 613/2024

Union of India

.....Appellant(s)/Petitioner(s)

Through: Mr. Vishal Sharma, DSGI

**Vs**

M/s Onkar Nath Bhalla and Sons Contractor Pvt. Ltd.

..... Respondent(s)

Through: Mr. R. K. Gupta, Sr. Advocate with  
Mr. Udhay Baskar, Advocate

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**ORDER**  
**03.06.2024**

**CM No. 613/2024**

सत्यमेव जयते

**01.** Heard.

**02.** Through medium of a petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner – Union of India has come forward to challenge an arbitration award dated 18.05.2023 passed by an arbitral tribunal of sole arbitrator Sh. R. P. Tripathi with respect to a dispute under a contract agreement No. CEAUFU-33/2015-16 for the “Construction of Storage Accommodation at Air Force Station, Udhampur” involving contract value of Rs. 28, 90, 00,000/- for a work period with

effect from 14.02.2016 which came to be completed upon an extended time schedule on 17.02.2020.

**03.** The arbitral tribunal, in terms of said award, has come to allow the following claims of the respondent:-

i.	Claim No. 1	Reimbursement of losses arising out due to non-reimbursement of statutory increase in wages of labour in terms of condition-63 of GCC for an amount of Rs. 96,10,866/-
ii.	Claim No. 2	Reimbursement of losses suffered due to delayed and curtailed on account (RAR) payment for an amount of Rs. 5,62,695/-.
iii.	Claim No. 3	Reimbursement of losses on account of extra amount incurred for providing ordinary Portland cement in lieu of Portland possolana cement for an amount of Rs. 9,24,148/-.
iv.	Claim No. 4	Reimbursement of losses/damages for breach of contract committed by the department due to latches and defaults on its part resulting in unreasonable, unjustified and abnormal prolongation of contract for an amount of Rs.47,91,419/-. सत्यमेव जयते
v.	Claim No. 7	Reimbursement of variation in prices of material, fuel and labour as per standard formula being followed/adopted in MEs for works having period of completion 24 (twenty four) months or more for an amount of Rs. 26,95,699/-.
vi.	Claim No. 8	Reimbursement of losses suffered due to delayed payment of final bill for an amount of Rs. 63,320/-.
vii.	Claim No. 10	Interest on all claims as admissible under section 31 (7) of the Arbitration and Conciliation Act, 1996 (pre-suit, pendent-lite and future) @ 10% simple interest per annum with effect from 27.09.2022 on account of past and pendent lite interest and future @ 10% per annum.
viii.	Cost of Reference for an amount of Rs. 10,10,100/-.	

**04.** This Court, in terms of an order dated 06.11.2023, has come to direct stay of operation of said award under challenge subject to the petitioner depositing the awarded amount in terms of requirement of section 36(3) of the Arbitration and Conciliation Act, 1996 ( in short "A&C Act, 1996") within a period of four weeks.

**05.** Stay of the operation of the impugned award came to be directed in response to the petitioner's application CM No. 6585/2023 though without inviting objections from the respondent. In fact, said application CM No. 6585/2023 stood disposed of by self same order.

**06.** Pursuant to the direction for deposit of awarded amount, the petitioner came forward making deposit of an amount of Rs. 2,08,86,887/- through NEFT transaction No. 231207042694 in the official account 202 of the Registrar Judicial, Jammu on 07.12.2023.

**07.** Upon the deposit of the said amount having taken place, the counsel for the respondent has now pressed for release of the deposited awarded amount by citing the unreported judgments of High Court of Calcutta in the case of **Damodar Valley Corporation Vs Reliance Infrastructure Ltd. (GA No. 6, 7 of 2022, AP No. 40 of 2020) decided on 25.03.2022, State of West Bengal and another Vs Dilip Kumar Saha (APO No. 95 of**

**2021) arising out of IA GA No. 2 of 2021, AP No. 89/2015 decided on 29.11.2021 and The State of West Bengal and others Vs M/s BBM Enterprise ( IA No. GA 1 of 2023 in AP 808 of 2022) decided on 25.07.2023** read with a judgment of the Hon'ble Supreme Court of India in the case of **Pam Development Private Ltd. Vs State of West Bengal, 2019 AIR SC 3937, Dilip Kumar Chatterjee Vs The State of West Bengal (Miscellaneous Application No. 622/2022 in SLP(C) No. 6717/2021), date of order 18.04.2022 and SREI Infrastructure Finance Limited Vs Candor Gurgaon Two Developers and Projects Pvt. Ltd. in petitions for Special Leave to Appeal (C) Nos. 20895-20897/2018, dated of order 14.09.2018** as mentioned by this court in the order dated 24.05.2024.

**08.** For the purpose of seeking release of the deposited amount, the respondent has come forward with an application CM No. 6163/2024. Mr. R. K. Gupta, learned Sr. Advocate appearing for the respondent, while countering the vehement objection of Mr. Vishal Sharma, the learned DSGI representing the petitioner to the release of deposited award amount or any part thereof as solicited by the respondent, has invited this Court to examine the situation as to what for while staying the operation of award, and that too by virtue of an ex-parte order dated 06/11/2023 , this Court came to direct the deposit of the

awarded amount to be kept in a fixed deposit with no further purpose except just to stay in an idle deposit.

**09.** By reference to the amended section 36(2) & (3) of the A&C Act, 1996, Mr. R. K. Gupta, learned Sr. Advocate very passionately urges this court to appreciate that the award amount in principle is the money meant to be availed and appropriated by the respondent but because of section 34 challenge registered, the respondent's entitlement to have the award money gets subject to the outcome of the statutory remedy of challenge under section 34 of the A&C Act, 1996 but nevertheless the locking of the award amount in a fixed deposit is a situation which serves neither party's interest in the case.

**10.** Elaborating the point further, learned counsel Mr. R.K.Gupta submits that in case operation of a given award gets conditionally stayed in a petition under section 34 without any concomitant direction for deposit of award amount, then the award money actually sub serves the beneficial purpose of the challenger party against whom an award has been passed whereas if a stay of operation of the award is with a condition for deposit of the award amount with the Court to be then kept in a fixed deposit to stay in wait for the final outcome of the case, then the award amount in a fixed deposit serves nobody's interest and gain in any manner whatsoever and that is where the underlying spirit of sub-section 2 & 3 of section 36 is to be appreciated by

the court in taking forward the court direction of mere deposit of award amount to some purposeful and desired end which is to order the release of the deposited amount in favour of an award bearer/holder subject to any terms and conditions as may be found and deemed fit to secure the return of release money or any part thereof to the Court in the event of award suffering reversal/alteration.

**11.** It is this application which has engaged this Court for the purpose of its adjudication coming up post order of stay of operation of the award under challenge and that begs for pondering of the points as to whether amended section 36 in terms of its sub section (3) of A&C Act, 1996 envisages release of award benefit/amount in favour of an award bearer/holder consequent upon stay of an award challenged, and if not, then what is the enforceability envisaged and in what manner it is contemplated qua an award not stayed in terms of its operation in section 36(2) notwithstanding the pendency of challenge under section 34 of A&C Act, 1996.

**12.** At the very outset, pre-amended and amended section 36 is reproduced herein so as to stand and serve as companion perspective for sake of examination and understanding of matter leading to its conclusion.

**Pre Amendment:**

36. Enforcement:- Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the court.

**Post Amendment:**

36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing: Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

**13.** An arbitration award, coming into being under section 31 and section 32(1) of the A & C Act, 1996, used to have a deferred enforcement and not an instant enforcement under pre-amended section 36.

**14.** Under pre-amended section 36, enforceability of an award was a matter of coming upon either of two outcomes. One very obvious and that was upon expiry of the time for making an application to set aside an arbitral award under section 34 without any challenge taking place, and second upon the refusal/rejection of an application made for setting aside of an award under section 34 of the A&C Act 1996. In both situations, the award's finality envisaged under section 35 of the Arbitration & Conciliation Act, 1926 would leave an award stamped with a decree status.

**15.** In this sense of scheme of pre-amended section 36, the decree status of an award envisaged under section 36 itself was to come into effect only in the event of one of two aforesaid situations happening both relatable to section 34.

**16.** Enforceability and executability of an arbitration award was a sort of two in one feature under pre-amended section 36 and that was an award enforceable only when it acquired the deemed status of a decree of a court which admitted of execution for its enforcement on its terms as the executability being an essence of a decree of court.

**17.** Thus, once an award would come to have a decree status, then it simply meant that enforcement of said award, in fact, was an execution of a decree of a court in every sense of



situation in the eyes of law. So what was an enforcement of an award under pre-amended section 36 was, in essence, an execution of a decree of civil court, and an execution of a final decree under Code of Civil Procedure, 1908 admits of no stop and stay until a decree fetches its full effect in favour of a decree holder against a judgment debtor. So the enforceability of an arbitration award under pre-amended section 36 was, in fact, its executability contingent upon the two situations as born out, expressly in pre-amended section 36.

**18.** Now bearing in mind the pre amended nature & scope of section 36 of Arbitration & Conciliation Act, 1996, an insightful reading of the scheme of amended section 36 of the A&C Act, 1996 guides and leads one to an understanding of the actual legislative intent nursing and underlying the amended avatar of section 36 which, by no stretch of reference and reasoning, was ever there in section 36 in its original form and frame. Obviously what was envisaged under pre-amended section 36 is meant not to be repeated under amended section 36 and so what is actually that which underlines amended section 36 is a matter begging for comprehension and understanding.

**19.** New looking section 36, bearing three sub sections, came into being by an Act No. 3 of 2016 after the Union Legislature had come to have, in the run of time, an accumulated experience of practical working of the A&C Act, 1996 and in

particular the manner in which section 34 registered challenges against the arbitration awards were getting locked and bogged down taking its own time in getting answered from the courts across India and till that time leaving the challenged awards stillborn in terms of its legal effects except that of being amenable to challenge and contest under section 34 thereby leaving an award earner/holder in a position of no gain/advantage except just to be a compulsive waiter, made to stay in expectation of favourable final words of adjudication by the court exercising jurisdiction under section 34 with respect to a challenged award, irrespective of merits/demerits of said challenge. In fact, the Hon'ble Supreme Court of India in the case of **“Hindustan Construction Company Ltd. and another Vs Union of India and others, (2020 AIR SC 122)** in para 3 of its judgment has taken average pendency period of challenge proceedings under section 34 of the Arbitration & Conciliation Act, 1996 to be six years and during this lock period an automatic stay of operation of an award setting in. In the judgment (supra), the Hon'ble Supreme Court of India has adverted to the background leading to amendment of section 36 of the Arbitration & Conciliation Act, 1996.

**20.** Section 36 of A&C Act, 1996, as it was originally obtaining, was reckoned to be a one setting an inborn stalemate in the situation for every stakeholder, be it for an award

challenger, an award bearer/holder or for that matter even the court approached to adjudicate a contest and challenge to an arbitration award.

**21.** From an expediency perspective, this situation was not commending itself to be in sync with the very evolvement and efficacy of an alternate dispute resolution jurisdiction predominantly operating in world of business and commercial relationships bearing a co-relation with the legal-economic environment of India.

**22.** Viewed from a commercial dispute perspective, an arbitration award, at the end of the day, is nothing but, invariably, a money laden legal asset in the hands of its bearer/holder invariably born out of arbitrations of commercial disputes. Such an award's potentiality and value is in its immediate liquidity at the disposal and discretion of an award bearer/holder otherwise under pre amended section 36 it was just like a post dated cheque in the hands of the award bearer/holder encashable only upon expiry of time set and which, in the scheme of section 36 before amendment, was invariably upon final outcome of section 34 adjudication stretchable from months to years.

**23.** From the bowels of amended section 36 , following four end situations related to an award are envisaged :

- a) An un-challenged award upon expiry of prescribed period of challenge under section 34 as envisaged under section 36(1);
- b) A challenged award within period prescribed under section 34 and stayed unconditionally as envisaged under section 36 (3);
- c) A challenged award within period prescribed under section 34 but without being stayed as envisaged under section 36(2); and
- d) A challenged award within period prescribed under section 34 and stayed subject to terms and conditions in terms of section 36(3).

**24.** Situations set out at serial number (a) and (b) labour no effort for an understanding, be it for a laity or lawyer, as while an unchallenged award bears its instant legal effects whereas an unconditionally stayed award under challenge suffers instant freezing of its legal effects till final outcome of challenge posed to it under section 34 of A&C Act, 1996. It is the situations at serial number (c) and (d) which bear an interpretational import to be fully gripped and grasped so as to serve the legislative purpose underlying the two.

**25.** Now coming to amended version of section 36, in the context of situation c (supra), its sub section (1) and (2) present an inter play of two scenarios though deceptively similar but, in fact, legally different.

**26.** Section 36 has a heading given “Enforcement”. Word “Enforcement” in its legal connotation is meant and defined to be a fact of putting something such as law into effect; the execution of law; the carrying out of mandate or command. Word “Execution” in legal sense is also meant to be carrying out come act or course of conduct to its completion; completion of an act; putting into force: process of carrying into effect the directions in a decree or judgment as per the Black’s Law Dictionary, 6<sup>th</sup> Edition

**27.** Amended section 36(1) very correctly envisages holding back from an arbitration award the deemed status of a decree of a civil court till the expiry of time available for challenging an award under section 34 and that an award remains/stays un-challenged. Said incubation period is of only three months. In case no challenge comes to be posed against an arbitration award within given period, the very next moment a given award self earns de jure status and effect as a decree of civil court and thereby attaining instant executability and becoming executable at any given point of time just at the mere discretion of an award bearer/holder.

**28.** An un-challenged arbitration award, in terms of section 36(1), transforms itself to be a decree of civil court and consequently entitles an award bearer/holder to earn its execution on award’s own terms without awaiting anything

further to happen to such an unchallenged award under the A&C Act, 1996. An award bearer/holder, as being a decree holder, can go for its instant execution before any court competent to execute the award as decree under the Code of Civil Procedure 1908 ( in short CPC). Such an award suffers no clog/conditionality in the matter of its executability. It needs to be kept in mind that an execution of a decree of a court attaining finality is an irreversible legal process under the CPC and that will apply equally to an award deemed to be decree under section 36(1) of A&C Act, 1996.

**29.** Thus, while the executability of an award as a decree is in the preserve of section 36(1), section 36(2) has different scenario encoded. The enforceability reserved with respect to a challenged award under section 36(2) is in the manner that pending an adjudication of a challenge posed to an award under section 34 of A&C Act, 1996 and stay not being granted against the operation of a challenged award upon a separate application made and rejected under section 36 (3), then such a non stayed award is being envisaged to be enforceable as per text-wise and context-wise reading and understanding of sub section 2 of section 36.

**30.** A grant or refusal of stay with respect to operation of an arbitral award under section 36(3) by a court sitting in an adjudication of challenge to the arbitral award under section 34, is subject to competing circumstances of a given case put forth by

a challenger and defender of a given award. For the sake of present case, this court is not lending itself to examine what are the requirements to factor in for stay of an award with or without term and condition as that is the not the issue involved.

**31.** Section 36(2), in essence, relates with and refers to non-stay aspect of an arbitral award though under challenge, by leaving an impressed enforceability with respect thereto.

**32.** Now, enforceable nature/status of such a non-stayed award under section 36(2) is to be as a decree under section 36(1) or is to be enforceable otherwise than as a decree because of being not stayed under section 36(2) is the riddle which besets sub section 2 of section 36. This aspect needs to be dwelled upon before stepping forward to next scenario of stay of an award provided under sub section 3 of section 36 of the A&C Act, 1996.

**33.** Now, in the new scheme of amended section 36 under sub-section (2), a case where an award gets challenged under section 34 and same being not stayed, the status of decree, obviously, cannot be read into and bestowed upon such an award unless it comes clean and confirmed in an adjudication launched under section 34 to be made by a given court in terms of section 42's mandate. If non-stayed award under the effects of section 36(2) & (3) is to be reckoned enforceable as a decree of a civil court, then wouldn't that amount repelling the very express

meaning and mandate of section 35 and 36(1) providing as to when an award will bear a decree status if stays unchallenged and/or of final outcome of section 34 proceedings salvaging an award and thereby stamping its status as a decree.

**34.** Thus, what the Union Legislature in sub-section 2 of section 36 meant to reserve with respect to an award, though under a challenge proceedings but its operation not being stayed, is a de facto enforceability in comparison to an award becoming a decree of civil court under section 36(1) or a section 34 tested final award under section 35 earning de jure enforceability which is equivalent to an executability of a decree of court which cannot be subjected to any extraneous rider or hiccup.

**35.** Essence of a decree of a civil court is in its executability and, accordingly, the essence of an arbitration award under amended section 36 (1) or of a confirmed award under section 34 is in its enforceability as a decree, whereas enforceability of a non stayed award as envisaged section 36(2) is not meant to be, and cannot be, enforceability of an award under section 36(1) or of a confirmed award under section 34.

**36.** Wording of sub-section 2 of section 36 unfolds the afore-stated character and status of a non stayed award facing and pending a challenge under section 34.



**37.** It is only upon a stay order asked for by a party in challenge proceedings under section 34 and on being granted by the court seized of challenge proceedings that an award's enforceability is to get denuded and accordingly depriving an award bearer/holder of any expectation/claim to get the immediate benefit/release otherwise reserved and meant to come in its/his favour out of the effects of the award upon the outcome of section 34 challenge.

**38.** Staying the operation of an award, in the eyes of law, is to mean that such an award, so long as sub judice under section 34 proceedings, is not to have its legal effects delivered/realized in the manner, to the purpose and in favour of a party as is otherwise meant to be thereunder. It will be an irreconcilable contradiction to conceive and claim that an under challenge award is stayed and still enforceable at the same time in the sense of releasing its effects in favour of an award bearer/holder. A statute is not meant to set in or pop up contradiction in its own working sphere.

**39.** Section 34 of A&C Act, 1996 is the one and only effective remedy in law to a party aggrieved of a given arbitration award. There is a well known edict of law, followed without a miss, that a legislature does not frustrate a remedy given under a given legislation. Under section 36(2) enforcement of a challenged

award, in the event of non grant of stay, cannot be equated with enforcement of a decretal award emerging under section 36(1).

**40.** In case where an award comes to be challenged under section 34 before a court and despite an application made under section 36(2) seeking stay of operation of the award so challenged, a court does not grant stay of/refuses to stay its operation in exercise of its discretion, a question needs to be posed, and in fact gets self posed, whether such non-stayed award is free to earn its enforcement bearing the deemed status as if a decree of the court as is an award under section 36(1).

**41.** A non- stayed award free to run and seek its enforcement disguised as a decree may not be and cannot be the scenario envisaged under entire mechanism of amended section 36 (2) for the reason that if non-stayed award under challenge in section 34 proceedings is to be reckoned to be a decree of the court and accordingly enforceable/executable in the manner as provided under Order 21 CPC, then an award bearer/holder, while engaged in a state of contest under section 34 with respect to a given award, is to be held legally free, as a matter of an entitlement, to go for an independent execution proceedings before a court, that too other than the court held up with section 34 proceedings, to earn the execution and satisfaction of the decretal award just by showing to an executing court that the

award is suffering denial of stay of its operation and hence very much enforceable and executable.

**42.** In the event of the scenario of a non-stayed award getting enforced/executed during the very pendency of section 34 proceedings, then very said section 34 remedy would be literally rendered a mirage to the extent of being frustrating without any default on the part of an award challenger just because of being unsuccessful in getting stay of operation of the award getting caught in a devil and deep sea situation still constrained to pursue and drag the challenge against very said award under section 34, and so much so even leaving the court dealing with section 34 proceedings as a mute spectator to the execution proceedings simultaneously taking place or having taken place elsewhere without even having an iota of notice and say to said effect.

**43.** Surely, section 36 (2), in its amended form, does not intend to non-suit and upstage a party having initiated a challenge proceedings under section 34. Legislature never intends to frustrate a legal remedy provided in adjudicatory jurisdictions as the remedy under section 34 of A&C Act, 1996 is meant to be to whatever restricted extent that may be for an aggrieved party to vie for.

**44.** So, the enforcement of a non-stayed but a challenged award under section 34 envisaged in the context of section 36(2) cannot be of an award as if a decree of a court. Following this lead takes one to hold that enforcement of a non stayed award under challenge cannot be before and by the court other than the court petitioned under section 34 as only in this eventuality, while not staying a challenged award, the enforceability of such an award can be conceived to be workable without straining the text and context of section 36 in its entirety.

**45.** The enforceability envisaged under section 36(2) of a non stayed award is, thus, not to be from a decree perspective and status but an award under challenge but its operation not stayed leaving it very much in the gaze and guard of judicial discretion of the court handling section 34 challenge to call upon and direct an award challenger to carry out the obligation awarded against it/him, which may include deposit of the award amount if it is a money award, subject to any simultaneous terms and conditions as may be placed upon the award bearer/holder to get the award benefit or release of award money under it thereby saving the final outcome of the challenge to an award under section 34 which if it fails would leave an award bearer/holder satisfied with a pre enforced award or if upset of an award takes place, then principle of restoration under section 144 CPC read with section 141 CPC coming into picture to recall the amount released or

benefit extended under court order. This is how enforcement of an award under challenge but not stayed under section 36(2) can be said to balance equities between the parties to challenge and conceived to take place by a true construction of amended section 36(2).

**46.** Section 36(1) and section 34 outcome give a patent enforceability to an award bearing character of a decree of civil court whereas under section 36 (2) a potential enforceability is recognized in a challenged but non stayed award without being a decree of civil court.

**47.** The aforesaid mechanism of section 36(2) with respect to enforcement of non-stayed award under challenge cannot be conceived under section 36(3) in staying the operation of the award pending adjudication of challenge under section 34 subject to any condition as may be deemed fit to be set out attending stay of operation of the award.

**48.** Stay of operation of an award under section 36(3), with or without any condition, in the eyes of law, would, obviously, mean that its enforceability aspect is to get held up pending the final outcome of section 34 proceedings otherwise staying the operation of an award under section 36(3) but leaving it enforceable would amount to superfluosity not being in tune

with Latin maxim “lex rejicit superflua, pugnancia, incongrua (the law rejects superfluous, contradictory and incongruous things).

**49.** Under section 36(3) scenario, if upon a separate application made for stay of operation of an award under challenge and stay gets granted subject to term and condition imposed as deemed fit, for example in a case of an award being a money award, then as in the case of conditions meant for stay of money decree in an appeal under CPC, if a party challenging a money award is put to condition of deposit of award amount or any part thereof or tendering of security of any kind, then this condition is not meant for very next moment eventual release of the deposited award amount in favour of an award bearer/holder. Such a deposit of an award amount cannot be meant for prompting an order for release upon being applied for by an award holder with or without any condition.

**50.** If a challenged award is stayed even if subject to any term and condition whatsoever, then an enforcement of said stayed award to any extent whatsoever cannot be read as conditionality of stay of operation of the award. Only thing that would be while an award is put to stay, be it unconditional or conditional stay, is if stay of the award is unconditional there will be then no scope of any intervening operational aspect/prospect of the award till final adjudication of the proceedings under section 34 taking place, and if there is a conditional stay still that

condition would not be to serve a salver in favour of an award bearer/holder to earn the instant release of benefit granted under award be it moneywise or otherwise. A condition of stay of operation of an award by a court is more to make sure that a party coming to challenge an arbitration award of stakes, be it small or large, under section 34 is earnest in its/his challenge and is willing to bear the cross in exhausting the remedy under section 34 and not for a time gain game.

**51.** Thus, what the amended version of section 36 envisages is recognizing a discretion vesting in the court dealing with section 34 proceedings qua an award to enforce an un-stayed award by calling upon an award challenger to do as warranted in terms of his/its obligation under an award for the benefit of the award bearer/holder of course subject to any rider as the court may put in place for an award bearer/holder to accept for getting the release of effects/benefits under the award subject to final outcome/adjudication thereby saving and preserving the lis forming subject matter of section 34 proceedings. Option to avail the release of benefit or not under the challenged un-stayed award will always be subject to exercise of discretion by an award bearer/holder.

**52.** A very salient aspect needs to be kept in perspective that an order by a court granting or refusing a stay of operation of an arbitral award under section 36 (2) & (3) is not made an

appealable order under section 37. This aspect has some meaning to figure out and that is situation attending enforceability of a non stayed award and/or of stay of an award with or without term and condition is to remain within rein and recall of the court till final outcome of adjudication qua an arbitral award under section 34 takes place and that confirms the mechanism as to how enforceability of a non-stayed award is meant to be envisaged under amended section 36.

**53.** While going through the set of judgments of Hon'ble High Court of Calcutta as cited by Mr. R. K. Gupta, learned Sr. Advocate for the respondent in support of his plea for release of the award amount, this Court, meaning full respect to the said judgments, registers its reservation to follow the line of reasoning attending the said judgments of the Calcutta High Court in particular in the case of **"The State of West Bengal and others Vs M/s BBM Enterprise"** in the light of the reasoning as set out herein before with respect to the understanding and comprehension of section 36 in its amended version.

**54.** Now coming to deal with the application filed by the respondent bearing in mind the position of law as deciphered hereinbefore, this Court is of considered view that the respondent was prejudiced by issuance of a direction in the order dated 06.11.2023, staying the operation of the impugned award subject to deposit of the awarded amount, without being afforded an



opportunity of objection by the respondent to respond to the petitioner's CM No. 6585/2023 in which the stay of the operation of the impugned award was sought.

**55.** Therefore, this Court treats the application CM No. 6163/2024 filed by the respondent to be an objection to the petitioner's application CM No. 6585/2023 and, accordingly recalls the unconditional stay granted with respect to the operation of the impugned award by holding that the arbitrator in the case, who was an appointee of none else than the Engineer-in-Chief and was figuring on the panel of the arbitrators bearing an expertise in the field, has come up with claim-wise adjudication of the dispute to award the select claims of the respondent, which prima-facie appear to be granted bearing the facts and circumstances of the case in mind and adjudication.

**56.** Moreover, the respondent is volunteering that the release of the deposited award amount, if ordered in its favour, can be well reciprocated with any sound security as this court may deem fit to impose upon the respondent so as to secure the return of the award money along with attending interest liability in the event of reversal of the award under challenge in the main proceedings before this court and for that purpose the respondent is willing to furnish the bank guarantee of an equivalent amount of the award amount deposited before this Court.

**57.** Accordingly, this court allows the plea of the respondent for release of the deposited amount subject to furnishing of bank guarantee to the full amount of Rs.2,08,86,88 along with interest accrued in fixed deposit thereupon till date of its release in favour of the respondent. The unconditional bank guarantee to be furnished by the respondent to be that of a nationalized bank in the name and in favour of the Registrar Judicial, Jammu of this court within a period of one month upon furnishing of which the release of the deposited award amount to take place in favour of the respondent by the Registrar Judicial Jammu. In addition, the promoters of the respondent shall also furnish an individual undertaking with the Registrar Judicial, Jammu of this Court that the respondent shall abide by any direction/order that may come to be passed by this Court by any given point of time with respect to the reimbursement of the released award amount or any part thereof. **Ordered accordingly.**

**58. Disposed of.**

**59.** List the main matter on 05.08.2024.

**(RAHUL BHARTI)  
JUDGE**

**JAMMU**  
**03.06.2024**  
Muneesh

Whether the order is speaking/reportable : **Yes**