



2025:AHC:152828-DB

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 206 of 2025

S.S. Total Construction (I) Pvt. Ltd.

.....Appellant(s)

Versus

Union of India

.....Respondent(s)

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Counsel for Appellant(s)	: Anurag Khanna, Sr. Advocate with Neelesh Ramchandani, Shivangi Tripathi
Counsel for Respondent(s)	: S.P. Singh, A.S.G.I., Vivek Kumar Singh

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#### Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE**  
**HON'BLE KSHITIJ SHAILENDRA, J.**

1. This appeal is directed against judgement dated 13.05.2025 passed by the Commercial Court, Bareilly whereby the application filed by the respondent - Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') against award dated 10.12.2022 has been allowed and award impugned has been set aside.

2. Respondent floated a composite tender (civil and electrical work) for construction of permanent infrastructure at SHQ & Bn. Headquarters, Lakhimpur Kheri under Lucknow frontier; the appellant participated in the bidding process and was awarded the contract and agreement was entered into. As per the agreement, commencement of work was 07.05.2016 and the stipulated time for completion was fourteen months i.e. the scheduled date of completion was 06.07.2017.

3. It is alleged that the execution of the works was delayed inordinately due to events attributable to the respondents which led to the slippage in the planned progress of work. Extension of time was granted upto 15.01.2018 and to the actual date of completion i.e. 28.04.2018.

4. It was claimed by the appellant that upon receiving the payment as per unilateral final bill finalized by the respondent, the appellant required the respondent to release the withheld payment and also claimed that it had

suffered other losses and damages due to prolongation of the contract. It was also indicated that the payment received be treated as 'payment accepted under protest' and the notice be treated as notice under Section 25(i) of the General Clauses of Contract ('GCC').

5. In terms of the GCC, Dispute Redressal Committee was constituted, which rendered its decision on 15.01.2021, however, the appellant being dissatisfied with the said decision sought appointment of Arbitrator. Sole Arbitrator was appointed in terms of Clause 25 of the GCC. Statement of claim raising claims under 11 distinct heads was filed to which statement of defence along with counter-claim was filed, a rejoinder to the statement of defence and reply to the counter-claim was filed by the appellant. The Arbitrator delivered the award on 10.12.2022 awarding claims under 9 heads and dismissing the counter-claim.

6. Aggrieved of the award dated 10.12.2022, application under Section 34 of the Act was filed by the respondent, which was limited to claim 5(a) pertaining to claim on account of extra expenditure incurred due to increase in wages of labour in prolongation of contract, claim 5(c) pertaining to damages on account of site establishment in prolongation of contract, claim 5(d) pertaining to extra expenditure incurred on H.O. fixed expenditure due to prolongation of contract, claim 6 pertaining to bonus as per Clause 2A, claim 8 pertaining to refund of GST and claim 10 regarding award of interest on the claim awarded besides rejection of counter-claim pertaining to appellant's liability to pay GST on reimbursement.

7. The Commercial Court by the judgement impugned, only dealt with the issue pertaining to claim granted under claim nos. 5(a), 5(c) and 5(d) and set aside the entire award dated 10.12.2022 without even dealing with claim nos. 6, 8 and 10.

8. Learned counsel for the appellant made vehement submissions that the judgement passed by the commercial court is a result of non-application of mind to the dispute before the court. Submissions have been made that the commercial court has passed the judgement in a wholly mechanical manner, without even adverting to the factual aspect of the matter.

9. Submissions have been made that before the Arbitrator, claims under 11 distinct heads were raised, out of which under 9 heads, award was made in favour of the appellant and counter-claim was rejected and the application under Section 34 of the Act was restricted only *qua* 6 claims awarded in favour of the appellant and the rejection of the counter-claim.

10. It is further submitted that in fact the award made under 3 heads by the Arbitrator has already been paid to the appellant, however, the Commercial Court, though no challenge was laid to other claims awarded by the Arbitral Tribunal and in fact paid, by dealing with only claim awarded due to the delayed completion of project, which determination also is wholly incorrect, has set aside the entire award, which determination deserves to be quashed and set aside.

11. Learned counsel for the Union of India could not dispute the submissions made pertaining to the limited extent of challenge laid under Section 34 of the Act, payment of rest of the award having been made and that passing of the judgement by the commercial court *de hors* the challenge laid.

12. We have considered the submissions made by counsel for the parties and perused the material available on record.

13. A bare perusal of the award passed by the Arbitral Tribunal and challenge laid under Section 34 of the Act by the respondent, it is apparent that the challenge laid was limited only to the extent of six claims and rejection of counter-claim. However, the Commercial Court though noticed the challenge laid, in a wholly misguided manner and apparently without even looking at the record of the case has dealt with only one issue, which arose in the application under Section 34 of the Act i.e. pertaining to the award of compensation for delayed completion of work under Claim 5(a), 5(c) & 5(d) only.

14. The manner in which the judgement has been passed by the Commercial Court leaves much to be desired and is reflective of a total non-application of mind to the subject matter and the extent of the challenge laid. Out of 6 claims under challenge only 3 were dealt with and not a word has been indicated *qua* the rest. Even the issue dealt with is in

a wholly curostry manner and as such, the judgement cannot be sustained.

15. Consequently, the appeal is **allowed**. The judgement dated 13.05.2025 passed by the Commercial Court is quashed and set aside.

16. The matter is remanded back to the Commercial Court, Bareilly for re-hearing and deciding the same afresh based on the submissions made and the record of the case.

**(Kshitij Shailendra, J.) (Arun Bhansali, CJ)**

**August 29, 2025**  
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