IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

COMMERCIAL DIVISION

Before:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

FAT 180 Of 2022

State of West Bengal
Vs.
Rajpath Contractors and Engineers Limited

For the Appellant	:	Mr. Dibashis Basu, Ld. A.G.P., Ms. Sneha Datta, Ld. Junior Gvt. Adv., Mr. Purnendu Das, Adv., Mr. Chandrachur Lahiri, Adv.,
For the Respondent	:	Mr. Sakya Sen, Ld. Sr. Adv., Mr. Priyankar Saha, Adv., Ms. Srijani Mukherjee, Adv., Mr. Ritinkar Bhattacharjee, Adv.
Heard On	:	27.08.2026, 07.09.2026, 17.09.2026, 28.09.2026
Hearing Concluded On	:	28.09.2026
Judgment Delivered On	:	12.10.2026

Aryak Dutt, J.:

1. This appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") is directed against the judgment dated 31st March, 2022, passed by the learned Judge, Commercial Court at Alipore in Misc. Case (Arbitration) No. 35 of 2019. By the judgment, the learned Commercial Court rejected the application of the State of West Bengal under Section 34 of the Act and declined to set aside the Arbitral Award dated 29th September, 2014, as corrected by the corrigendum dated 16th October, 2014, passed by a three-member Arbitral Tribunal in favour of Rajpath Contractors and Engineers Limited.

2. The State was the respondent before the Arbitral Tribunal and the petitioner before the Commercial Court and it is the appellant here. Rajpath Contractors and Engineers Limited (hereinafter referred to as "the contractor") was the claimant and is the respondent here.

3. Following Tender Notice No. 14 of 1994-95 (2nd Call) of the Superintending Engineer, State Highway Circle No. 1, P.W.

(Roads) Directorate, the contractor was awarded the work of "Design and construction of proposed High Level R.C. or P.S.C. Bridge over River Hogol at Sonakhali on Calcutta-Basanti Road in the district of South 24-Parganas under 24-Parganas Highway Division" being Agreement No.32 of 1996-97 was executed between the parties.

4. The work was completed about six years (2191 days) after the scheduled date. The contractor applied for extension of time by letters dated 29th December, 1999 and 5th October, 2004. No formal extension was granted. The State, however, accepted the work, paid the 13th R/A and Final Bill and the 12th escalation bill, and recorded the date of completion as 30th December, 2005.

5. The contractor attributed the delay to the State. Its case was that the State failed to hand over free and unobstructed possession of the site, delayed the mobilisation advance, failed to make proper and timely on-account payments, failed to prevent obstruction by local pressure groups at the site, and delayed approval of drawings. The State's case was that the delay was caused by the contractor's own slow progress, its want of readiness and its failure to mobilise resources.

6. Disputes having arisen, a three-member Arbitral Tribunal was constituted. Its members were engineers with long experience. The first sitting was held on 24th April, 2009. The contractor filed its statement of claim on 5th June, 2009, the State filed its statement of defence on 7th September, 2009, and the contractor filed its rejoinder on 4th February, 2010. The Tribunal in total held 36 sittings.

7. The Award runs into 189 pages. The Tribunal found that out of the total delay of 2191 days which is from 1st January, 2000 to 30th December, 2005, 197 days were attributable to the contractor. These were 24 days between 22nd February, 1997 and 17th March, 1997, when the contractor failed to submit drawings and designs, and 173 days between 1st February, 2002 and 23rd July, 2002, when it was negligent in submitting drawings. The balance of 1994 days was held attributable to the State.

8. The Tribunal made and published its award on 29th September, 2014 and awarded a principal sum of Rs. 3,65,87,951/-, along with interest pendente lite for a sum of Rs. 2,38,77,396/- for the period from 24th April, 2009 to 29th September, 2014, and costs of Rs. 5,41,500/-. By a corrigendum

dated 16th October, 2014, the Tribunal corrected certain clerical and typographical errors.

9. The State challenged the award under Section 34 by an application filed on 27th July, 2015. The case was received on transfer by the Commercial Court at Alipore on 7th November, 2019 and registered as Misc. Case (Arbitration) No. 35 of 2019.

10. The learned Commercial Court noted the State's objections that the contractor did not submit monthly bills. The delay in payment of bills is not a repudiatory breach. Claim 4 was barred by acceptance of the final bill. The contractor's own slow progress caused the delay. The claim for idle establishment was inconsistent with the plea that the contractor could not mobilise its resources. The finding of 1994 days of delay rested on overlapping charts. Claims 5 and 6 were allowed without reasons.

11. The learned Court held that the Tribunal had dealt with each claim and objection “with precise and sufficient reasons”. It held that the attribution of 1994 days of delay to the State was a finding of fact reached “after careful consideration of all documents as submitted by both sides” and could not be revisited by re-appreciating evidence. There was no breach of

natural justice, no non-application of mind and no patent illegality. The Section 34 application was rejected without costs.

12. Learned counsel for the State, relying on the written notes of argument, submitted that the award is contrary to the terms of the contract and to the public policy of India, and that the learned Commercial Court failed to examine the points raised.

13. The claims made by the claimant and allowed by the Arbitral Tribunal are contrary to the Special Terms and Conditions of the contract. The contract provided that the contractor shall not be entitled to any extra cost unless he gives notice of his claim in writing. The contractor never gave such notice. This point was urged before the Commercial Court but not dealt with.

14. Profit is always built into the contractor's rates, and contract does not permit a separate claim for loss of profit. The contractor was also paid escalation of Rs. 4,26,00,598/- in gross. Allowing loss of profit on top of this results in double payment.

15. The Measurement Books maintained by the contractor showed slow progress. From the outset the contractor complained of hindrances at the Basanti end while the State insisted that it start at the Sonakhali end. The contractor began work at Sonakhali only on 18th December, 1997, almost a year after the work order was issued. Neither the Tribunal nor the Commercial Court dealt with this.

16. On delayed payment of bills the Tribunal awarded interest at 15% per annum simple. This is contrary to the contract and to natural justice.

17. The full contract value of Rs. 8,29,00,000/- was paid through the 13th and Final Bill and accepted by the contractor without objection. Having accepted final payment, the contractor was estopped from raising further claim.

18. Claim on account of escalation is contrary to contract, under which escalation is payable only after one year from the date of dropping of tenders Claims for escalation and refund of security deposit were allowed in full without reasons.

19. The Tribunal has awarded interest at several stages on the same sums, pre-reference, interest *pendente lite*, and interest at 18% per annum from 1st February, 2006 till payment. The Tribunal acted arbitrarily and beyond its jurisdiction and ignored the contract.

20. The State in their written submission relied on ***Bharat Coking Coal Ltd. v. Annapurna Construction*****,** reported in ***(2003) 8 SCC 154***, for the proposition that an arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract, and cannot travel beyond its parameters. It relied on ***Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*****,** reported in ***(2003) 5 SCC 705***, for the proposition that the terms of the contract must be considered before deciding whether a party claiming damages is entitled to them. Finally, reliance was placed on ***Executive Engineer (R and B) v. Gokul Chandra Kanungo*****,** reported in ***2022 SCC OnLine SC 1336***, on the discretion of the Arbitrator under Section 31(7)(a) of the Act and the duty to give reasons for the rate and period of interest.

21. Learned counsel for the contractor, relying on its notes of argument, supported the award and the impugned judgment.

22. It was argued by the respondent that the scope of review under Section 34 is narrow, and under Section 37 it is still narrower. The Court does not sit in appeal over the award, cannot re-appreciate evidence, and cannot substitute its own view for that of the Tribunal.

23. The award is a detailed, speaking award. The Tribunal considered the pleadings, every exhibit relied on by both sides and every contractual clause placed before it. It recorded specific findings on delay in approval of drawings, delay in handing over a hindrance-free site, and the history of payments, and then dealt with each claim separately. The Tribunal appreciated the evidence placed before it and reappreciation of such evidence under Section 34 or Section 37 is not permissible.

24. The finding that delay was attributable to the State is a pure finding of fact. It was reached by a Tribunal of three experienced engineers, after analysis of the contemporaneous record. The State's challenge is an invitation to re-weigh that evidence.

25. It was argued that the grounds concern the construction of the contract of which the Tribunal is the final judge. Escalation, delayed payment, and whether acceptance of the final bill operated as a waiver, has been answered by the Tribunal. The Tribunal's view on each is a plausible reading of the contract as a whole and conduct of the parties. It did not rewrite the contract.

26. The State has raised grounds, almost all of which attack findings of fact and interpretation by the Tribunal. The Commercial Court refused to conduct a roving re-appraisal of evidence looked into by the Tribunal. That refusal was correct in law. The award is not patently illegal, not contrary to the fundamental policy of Indian law, and not against justice or morality.

27. The respondent in the written notes relied on the following judgments ***Madhya Pradesh Road Development Corporation Ltd. v. Jabalpur Corridor P. Ltd.,*** reported in ***2026 SCC OnLine SC 1001, Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust,*** reported in ***(2026) 3 SCC 186, Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice***

Mills*,** reported in ***2024 SCC OnLine SC 2632*, *Ramesh Kumar Jain v. Bharat Aluminium Company Ltd.*,** reported in ***2025 SCC OnLine SC 2857*, *MMTC Ltd. v. Vedanta Ltd.*,** reported in ***(2019) 4 SCC 163*, *Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking*,** reported in ***(2023) 9 SCC 85* and *Larsen Air Conditioning and Refrigeration Co. v. Union of India*,** reported in ***(2023) 15 SCC 472 for the proposition of scope of Section 37 of the Act of 1996. The learned advocate for respondent had further relied on ***Associate Builders v. Delhi Development Authority*,** reported in ***(2015) 3 SCC 49*** for the proposition that the Tribunal is the master of the quantity and quality of evidence produced before it.

28. The test applicable is Section 34 as explained in ***Saw Pipes (supra)*** and ***Associate Builders (supra)*** is that, an award is open to challenge if it is contrary to the fundamental policy of Indian law, the interest of India, justice or morality, or if it is patently illegal.

29. In ***Associate Builders (supra)*** the Supreme Court cautioned that when a court applies the public policy test it does not act as a court of appeal, errors of fact cannot be corrected,

and the arbitrator is "the ultimate master of the quantity and quality of evidence". An award based on little evidence, or on evidence that does not measure up in quality to a trained legal mind, is not invalid on that score.

30. The Appellate Court's role under Section 37 is narrower. In ***MMTC Ltd. (supra)***, the Supreme Court held that interference under Section 37 "cannot travel beyond the restrictions laid down under Section 34". In ***Punjab State Civil Supplies Corporation Ltd. (supra)***, the Court said that the Section 37 power "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".

31. Most recently, in ***Madhya Pradesh Road Development Corporation Ltd. (supra)***, the Supreme Court described the jurisdiction to upset an award as "a narrowing pyramid", in which each higher layer must be "increasingly hands-off". It was held that interference under Section 37 is permissible only where the Section 34 court exceeded its jurisdiction or failed to exercise it. To the same effect are ***Konkan***

Railway Corporation Ltd. (supra) wherein the Supreme Court restored an award because there was "at least some evidence and logical rationale for each award element" and the arbitrator's approach "was certainly a possible view a reasonable man might take".

32. The authorities relied on by the State do not enlarge this jurisdiction. ***Bharat Coking Coal Ltd. v. Annapurna Construction*** reported in ***(2003) 8 SCC 154*** arose under the Arbitration Act, 1940. It held that an arbitrator who wanders outside the contract commits a jurisdictional error, but it reaffirms, that an error in the construction of the contract is an error within jurisdiction. ***Saw Pipes Ltd. (supra)*** holds that the terms of the contract must be considered before awarding damages. Neither decision permits a court to re-weigh evidence or prefer its own reading of the contract to a plausible reading by the Tribunal.

33. The State's submissions on this issue invite a fresh appraisal of the evidence. The record on an earlier, unrelated contract says nothing about who delayed this one. Whether the contractor ought to have started the work, and whether the delay

in the mobilisation advance is excused by the absence of a bank guarantee, are questions of fact on which the Tribunal of three experienced engineers were the final judges.

34. A Tribunal is not obliged to refer to every document on record. The learned Commercial Court correctly held so.

35. The finding that delay was attributable to the State is based on evidence and is a possible view. It has been affirmed under Section 34. It is not open to this Court to disturb it.

36. The State contends that Claims are barred by the Special Terms and Conditions, because the contractor did not give notice within 7 days. Failure to hand over an unencumbered site, delay in approving drawings, and delay in payment is a question of construction of a contract. Under ***Associate Builders (supra)*** construction of the term of contract is for the Tribunal to determine and cannot be displaced unless no fair-minded person could adopt it.

37. The State has not identified any period within the 1994 days that falls in another excluded category. Further, the contractor sought extension of time by letters dated 29th

December, 1999 and 5th October, 2004. The State neither rejected those requests nor declined to accept the work. It paid the Final Bill recording completion on 30th December, 2005. The State was thus on notice throughout.

38. If this Court differs from the view taken by the Arbitral Tribunal such view of this court cannot be substituted in the award. Unless such award portrays perversity. No such perversity is shown in the present case.

39. The State has argued that the contract bars a separate claim for profit, and that escalation already paid compensates the contractor. The Tribunal has held that for having its men, machinery and capital locked into one project for six years beyond the contract period. Loss of profit-earning capacity during a prolongation caused by the employer is a recognized head of damages. The Supreme Court upheld an award on that basis in ***McDermott International Inc. v. Burn Standard Co. Ltd.***, reported in ***(2006) 11 SCC 181*** as cited by the respondent.

40. The State has argued that the contractor, having accepted the final bill, was estopped from raising further claim. Whether acceptance of a final bill amounts to accord and

satisfaction or waiver is a question of fact, depending on the parties' conduct and the circumstances of payment. The Tribunal accepted that case in part. This is a finding on evidence which is not shocking to us.

41. Refund of the security deposit of Rs. 5,00,000/- was not in dispute. The work was completed and accepted. No ground is shown to withhold it.

42. The State's own Executive Engineer computed and paid escalation on March 1995 base. The later Report of the Committee on Public Accounts took a different view. The Tribunal declined to act on the Committee's report and held that no recovery was due. That is a construction of the contract which a reasonable person could adopt. The State may prefer the Committee's reading which was rejected by the Tribunal, but that precisely holds no ground for interference by us.

43. The State's complaint is that the Tribunal awarded interest several times over on the same sums. The Award compensates the contractor for the State holding back admitted amounts under its own bills beyond the due date. It is not interest on the sums awarded. The State has not pointed to any

clause of the contract that bars compensation for delayed payment. In the absence of such an agreement, the statute empowers the Tribunal to award interest.

44. The Tribunal awarded interest pendente lite only from the first sitting. There is no duplication of interest, no contravention of Section 31(7) of the Act, and no ground to interfere with the award of interest which is within the domain of the Arbitrators.

45. The learned Commercial Court held that the Tribunal had dealt with each claim with sufficient reasons, and refused to re-appreciate evidence. No ground under Section 34 is made out that would justify setting aside the award. The learned Court neither exceeded nor failed to exercise its jurisdiction.

46. The Supreme Court observed in ***MMTC (supra)*** and ***Jan De Nul Dredging India (P) Ltd. (supra)***, if an award is not liable to be disturbed under Section 34, it should not be interfered with under Section 37.

47. The award dated 29th September, 2014 is a detailed, reasoned award of 189 pages by a Tribunal of experienced

engineers. Its findings on the attribution of delay are findings of fact based on evidence. Its reading of the contract, and of the effect on the final bill, is a plausible one. Its award of interest is within Section 31(7) of the Act. It is not in conflict with the public policy of India. The learned Commercial Court rightly declined to set aside the Award.

48. In view of our discussion **F.A.T. No. 180 of 2022** is **dismissed**. The judgment dated 31st March, 2022 passed by the learned Judge, Commercial Court at Alipore in Misc. Case (Arbitration) No. 35 of 2019 is affirmed. The Arbitral Award dated 29th September, 2014, as corrected by the corrigendum dated 16th October, 2014, is upheld.

49. There shall be no order as to costs.

(Aryak Dutt, J.)

42. I agree

(Debangsu Basak, J.)