



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

W.P.(C) No.35734 of 2025

(In the matter of an application under Article 226 & 227 of the Constitution of India)

**Chief Engineer (Roads-1),
Bhubaneswar**

...

Petitioner

-versus-

**M/s.NKC Projects Pvt. Ltd.,
Haryana**

...

Opposite Party

Advocate(s) appeared in this case:-

For Petitioner : Mr.U.R.Jena, AGA

For Opposite Party : Mr.S.Dwibedi, Advocate

CORAM: JUSTICE B.P. ROUTRAY

**JUDGMENT
16th April 2026**

B.P. Routray, J.

1. Present writ petition is directed against the order dated 8th July 2025 of the learned Commercial Court passed in ARBP No.76 of 2024.

2. The facts of the case is that the present Petitioner, i.e. Chief Engineer, DPI and Roads, Government of Odisha, while challenging the arbitration award dated 8th May 2024 under Section 34 of the Arbitration and Conciliation Act in ARBP No.76 of 2024, filed a
WPC No.35734 of 2025



petition under Section 36(2) of the said Act for stay of enforcement of the award pending application under Section 34 of the Act. Learned Commercial Court granted stay of enforcement of the arbitration award pending disposal of ARBP No.76 of 2024 subject to deposit of the entire award amounting to Rs.26,97,43,880/-.

3. The Chief Engineer, being the Petitioner in the present writ petition, has challenged said order of the Court regarding direction for deposit of the award amount as a condition for stay of enforcement of the arbitration award. According to the Petitioner, he being an authority under Government of Odisha, is not required to deposit 100% of the award amount on the ground that such award passed by the arbitrator is erroneous one and in conflict with the public policy.

4. In course of hearing, Mr.Jena, learned Additional Government Advocate relies on a decision of this Court dated 9th March 2026 passed in W.P.(C) No.30361 of 2025 to contend that, the Petitioner being an authority under the Government of Odisha can be considered under such exceptional cases as not mandatory on its part to deposit the entire award amount keeping in view the nature of its solvency as a Government authority. Mr. Jena further takes recourse to Rule 8-A of Order 27 of the CPC in such matters for the purpose of Rule 5 of Order 41 of the CPC.



5. It is true that the Petitioner is the Chief Engineer (Roads-1) and an authority of Government of Odisha. It is also true that taking such position of the Petitioner as a Government Authority, he cannot be considered as insolvent at any point of time requiring to deposit the decretal amount. But at the same time by looking to the writ petition, it is seen that nothing has been mentioned in the writ petition in this regard leading exemption of the Petitioner from depositing the award amount as per the direction of learned Court. Rather it is mentioned at paragraph-8 of the writ petition that for lack of budget provision, it is not possible on the part of the present Petitioner to deposit the entire award amount as directed by the learned Court. The relevant averments made in the writ petition at paragraph-8 are reproduced below:

“8. That it is humbly submitted that the ARBP No.76 of 2024, which has been filed against the award dated 08.05.2024 (under Annexure-2) is pending for final disposal and due to sanction of funds and the same not being in the outcome budget 2025-26, it could not possible on the part of the present petitioner to comply the impugned award dated 08.05.2024 (under Annexure-2).”

6. It is thus clear from such averment taken in the writ petition that the Petitioner is unable to deposit the award amount despite the



direction of learned Court. In such situation, it cannot be contended on the part of the Petitioner that he being a Government authority is not required to be directed to deposit the award amount as a condition to stay enforcement of arbitration award in terms of Section 36(2) of the Act. As seen from the aforesaid statements made by the Petitioner, it is impossible on his part to deposit the award amount as per the direction of the learned Court.

7. The Hon'ble Supreme Court in the case of *Hindustan Construction Co. and another vs. Union of India and others, (2020) 17 SCC 324*, have observed that, the language of Section 36 of the Arbitration Act does not warrant an automatic stay on the enforcement of an arbitral award due to mere filing of Section 34 petition.

8. Section 36(3) of the Arbitration Act prescribes that the court may grant stay, upon such an application being filed, subject to such conditions as it may deem fit. So in terms of Section 36(3), the court is conferred with the discretionary power to grant stay of an arbitral award. Hon'ble Supreme Court in *Pam Developers Private Limited vs. State of West Bengal, (2019) 8 SCC 112*, had the occasion to consider the nature of applicability of provisions of the Code of Civil Procedure vis-à-vis the proceedings under the Arbitration Act and specifically, the interpretation of the phrase "due regard" appearing



in the first proviso. The Respondent therein had preferred an application seeking an unconditional stay of the arbitral award on the strength of Order 27 Rule 8-A of the C.P.C and the Calcutta High Court allowed the prayer for unconditional stay. The Hon'ble Supreme Court allowed the appeal and directed for deposit of the award amount as a condition for continuing the stay and reasoned that the exemption from furnishing the security as per the provisions in Rule 8-A of Order 27 of the C.P.C. could not be strictly applied to the arbitration proceeding and further stated that even if the exemption from furnishing the security was made applicable to the arbitration proceeding, such exemption would not extent from making deposit of the award amount. The Hon'ble Supreme Court have observed as follows:-

“22. Even otherwise a plain reading of Order 27 Rule 8-A CPC would make it clear that the same is only regarding security as mentioned in Rules 5 and 6 of Order 41 CPC, which is not to be demanded from the Government while considering the stay application filed by the Government. It, however, does not provide that the decretal amount cannot be required to be deposited in the appeal against a money decree.

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24. Further, it is to be noticed that Order 27 Rule 8-A CPC was inserted in 1937 when the British Crown was ruling our country. The same was brought in during the period of British



Raj to protect the interest of the then Government (Crown). While considering a case where the State of West Bengal was carrying on trade as owner and occupier of a market in Calcutta (now Kolkata) without obtaining a licence as required under Section 218 of the Calcutta Municipal Act, 1951, a Constitution Bench of this Court in *Supt. and Remembrancer of Legal Affairs v. Corpn. of Calcutta* [*Supt. and Remembrancer of Legal Affairs v. Corpn. of Calcutta*, (1967) 2 SCR 170 : AIR 1967 SC 997 : 1967 Cri LJ 950] considered the question as to whether this Court should adopt the rule of construction accepted by the Privy Council in interpreting statute vis-à-vis the Crown and held that: (AIR p. 1001, para 23)

“23. ... There are many reasons why the said rule of construction is inconsistent with and incongruous in the present set-up where we have no Crown, the archaic rule based on the prerogative and perfection of the Crown has no relevance to a democratic republic; it is inconsistent with the rule of law based on the doctrine of equality.”

25. In our considered view, the provision which was incorporated in the year 1937 during the British Raj, giving certain safeguards to the Government (which was then the British Crown) would not be applicable in today's time, when we have a democratic Government.

26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree — award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree-



holder would be fully deprived of the fruits of the award on mere filing of objection under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.

27. It may be true that CPC provides for a differential treatment to the Government in certain cases, but the same may not be so applicable while considering a case against the Government under the Arbitration Act. For instance, Section 80 CPC provides for a notice of two months to be given before any suit is instituted against the Government. Further, it also provides that no ex parte injunction order can be passed against the Government. Whereas on the other hand, under the Arbitration Act no such special provision has been made with regard to arbitration by or against the Government. There is no requirement under the Arbitration Act for a notice of two months to be given to the Government before invoking arbitration proceeding against the Government. Further, Sections 9 and 17 of the Arbitration Act also provide for grant of ex parte interim orders against the Government.



28. Section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act.

29. Although we are of the firm view that the archaic Rule 8-A of Order 27 CPC has no application or reference in the present times, we may only add that even if it is assumed that the provisions of Order 27 Rule 8-A CPC are to be applied, the same would only exempt the Government from furnishing security, whereas under Order 41 Rule 5 CPC, the Court has the power to direct for full or part deposit and/or to furnish security of the decretal amount. Rule 8-A only provides exemption from furnishing security, which would not restrict the Court from directing deposit of the awarded amount and part thereof.

30. For the foregoing reasons, we are of the opinion that the impugned order passed by the Calcutta High Court granting unconditional stay of the arbitration award dated 21-1-2010, cannot be sustained in the eye of the law. Accordingly, we allow these appeals and quash the order dated 13-12-2018 [*State of W.B. v. Pam Development (P) Ltd.*, 2018 SCC OnLine Cal 14141] passed by the Calcutta High Court and restore the order dated 3-10-2018 of the executing court passed in *Pam Development (P) Ltd. v. State of W.B.* [*Pam Development (P) Ltd. v. State of W.B.*, 2018 SCC OnLine Cal



14139] As already directed by order dated 3-10-2018 [*Pam Development (P) Ltd. v. State of W.B.*, 2018 SCC OnLine Cal 14139] , it shall be open for the petitioner award-holder to pray for release of the attached amount.”

9. In *Lifestyle Equities C.V. and another vs. Amazon Technologies Inc.*, 2025 SCC OnLine SC 2153, the Hon'ble Supreme Court by taking note of various earlier decisions have held as follows:-

“134. We summarize our final conclusion on the grant of benefit of stay of execution of a decree by an appellate court in term of Order XLI as under:—

(I) Order XLI Rule 5 contains the provision for the grant or refusal of stay of execution of the decree by the appellate court under the CPC. It categorically stipulates that mere filing of an appeal against an order of execution, shall not *ipso facto* operate as stay of proceedings. Any execution proceeding or an order therein, shall be stayed only if a specific, reasoned order granting such stay is passed by the appellate court, after proper application of mind.

(II) For the grant of stay of execution of a decree in terms of Order XLI, a prayer to such effect has to be specifically made to the appellate court and the appellate court has the discretion to grant an order of stay or to refuse the same.

(III) Order XLI Rule 5(3) of the CPC provides for satisfaction regarding sufficient cause as a pre-condition for granting benefit of stay of execution of decree, and it casts an obligation upon the appellate court to record its satisfaction for stay of execution such decree.

(IV) The power of the Appellate Court to order stay of execution of the decree is circumscribed and made subject to the existence of a “sufficient cause” in favour of the appellants being shown. In order to ascertain whether a “sufficient cause” exists for the grant of stay of execution of a decree under Order



XLI of the CPC, the appellate court as per sub-rule (3) of Rule 5 is required to examine:—

(i) Whether there will be substantial loss to the party applying for stay;

(ii) Whether the application has been made without unreasonable delay; and

(iii) Whether security has been given by the applicant for due performance of the decree.

(V) For the grant of stay of execution of the decree, the appellate court is required, after perusing the materials on record, to assign reasons for its satisfaction regarding the existence of a “sufficient cause”. Such reasons should be cogent and adequate. The reasons assigned must indicate the necessity for the *status quo* prevailing on the date of the decree and/or the date of making of the application for stay, to continue by granting stay, and not merely the reasons why stay should be granted.

(VI) Although, Order XLI Rule 5 of the CPC, uses the word “shall”, yet a combined reading of the sum and substance of Rule(s) 1(3) and 5(5) would reveal, that for the grant of stay of execution, it is not mandatory for the appellate court to impose a condition for deposit of the amount in dispute. The aforesaid provisions make it abundantly clear that the appellate court, for the grant of stay of execution, has a discretion to impose a condition of deposit of the amount depending on the facts and circumstances of each case.

(VII) A deposit is not a condition precedent for an order of stay of execution of the decree by the appellate court. The only guiding factor and statutory mandate, for the grant of such stay of execution as indicated in Rule 5, is the existence of “sufficient cause” in favour of the appellant, on the availability of which the appellate court would be inclined to pass an order of stay.

(VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and



only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.

(IX) A lodestar for bringing a case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question: -

(i) is egregiously perverse;

(ii) is riddled with patent illegalities;

(iii) is facially untenable; and/or

(iv) such other exceptional causes similar in nature.

(X) For the purpose of the grant or refusal of stay of execution of the decree under Rule 5 of Order XLI, it is immaterial whether the decree is a money decree or any other decree. The language couched in the said provision is very clear. Order XLI, Rule 5 of the makes no distinction between a money decree and other decrees, and the said provision applies with full rigour in both instances. Yet as a rule of prudence and established practice evolved over a period of time, no stay of execution of a money decree should be granted, except on the condition that the decretal amount be deposited in the court. However, such condition for deposit cannot be said to be mandatory and non-prescription thereof does not operate as a bar to staying the execution of a money decree.

(XI) There is no provision under Order XLI Rule 5 of the CPC imposing a mandate to deposit cash security as the only mode of security for execution of the decree. Security, for the purpose of the said provision, can be in the shape of property, bond and or in the form of an appropriate undertaking from the appellants to abide by the decree, seeking stay of execution."

10. In the facts of present case as narrated above, nothing is found to support the contentions of the Petitioner for his entitlement to an unconditional stay. Apart from this, the facts of present case are quite



different from facts in W.P.(C) No.30361 of 2025 and judgment dated 9th March 2026, which is taken as a support by Mr. Jena, learned counsel for the Petitioner to contend for exemption from depositing the award amount. In the said case, the deposited amount was in respect of the interest only of the award amount. But it is never shown in the present case and thus keeping in view the averments made at paragraph 8 of the writ petition (reproduced above), a series of doubt is raised on the conduct of the Petitioner regarding his capacity to deposit the award amount as per the direction of the learned court and so it is required on the part of the Petitioner to comply the direction of the learned court dated 8th July 2025. Further as discussed above, the contention of the Petitioner to take benefits of the provisions of Order 27 Rule 8-A of the C.P.C. in its application to the provisions of the Arbitration and Conciliation Act does not bear any force in view of the position of law settled in *Pam Developers* (supra). No such exceptional case, in terms of the principles laid down in *Lifestyle Equities C.V.* (supra), is found to support the contention of the Petitioner for grant of unconditional stay of the execution proceeding nor anything is found which is egregiously perverse or riddled with patent illegality or facially untenable or such other exceptional cause

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of similar nature to exercise discretion of the court for grant of unconditional stay without depositing the award amount.

11. In the result, the writ petition is dismissed and the direction for deposit of 100% of the award amount as directed by the learned court in the impugned order dated 8th July 2025 is confirmed.

(B.P. Routray)
Judge

C.R. Biswal, A.R.-cum-Sr. Secretary