

**THE HIGH COURT OF SIKKIM: GANGTOK**  
(Civil Appellate Jurisdiction)

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**DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE**  
**THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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**ARB. A. No. 12 of 2025**

**Union of India,**

Represented by the Chief Engineer (P)

Swastik C/O. 99 APO

Pin: 931717

Email: [bro-swtk@nic.in](mailto:bro-swtk@nic.in)

.... **Appellant**

***versus***

**M/s Nar Bahadur Dahal (NBD)**

P.O – Gyalshing Bazar,

District-Gyalshing

Sikkim, Pin: 737111

Email: [nb.dahal65@gmail.com](mailto:nb.dahal65@gmail.com)

Nbdahalsikkim3578@gmail.com

..... **Respondent**

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**Appearance:**

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Sittal Balmiki and Mr. Amit Kumar Sharma, Advocates, for the Appellant.

Mr. Jorgay Namka, Senior Advocate with Mr. Lahang Limboo and Mr. Sawal Rai, Advocates for the Respondent.

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Date of Hearing : 12.05.2026 & 14.05.2026

Date of Judgment : 26.05.2026

Date on which uploaded : 26.05.2026  
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## J U D G M E N T

### **A. Muhamed Mustaque, C.J.**

This appeal was preferred by the Union of India under Section 37(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

**2.** In an arbitral award passed by the Hon'ble Justice Pranab Kumar Chattopadhyay, Former Judge of the Calcutta High Court, as the Sole Arbitrator, the Union of India was directed to pay a sum of ₹23,21,54,534/- (*Rupees Twenty-Three Crores Twenty-One Lakhs Fifty-Four Thousand Five Hundred and Thirty-Four only*).

**3.** The Arbitral Tribunal allowed a counterclaim filed by the Respondent herein, who was the contractor engaged by the Union of India for the work of road improvement from Gangtok to Nathula. The contract was entered in the year 2009-10, and the terms of the contract were extended up to 31<sup>st</sup> March, 2015. While the counterclaims of the Respondent were allowed, the Tribunal rejected the claims raised by the Union of India.

**4.** We are not narrating the facts in this appeal, as we propose to remand the matter for fresh consideration by the learned Commercial Court, Gangtok, for reconsideration of the application under section 34 of the Act.

**5.** The plea of limitation though not taken by the Union Government before the Tribunal, was nevertheless raised before the Tribunal at the time of hearing, as seen from the impugned award of

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the Tribunal before the learned Commercial Court, Gangtok.

**6.** In an application under Section 34 before the learned Commercial Court, the ground was specifically raised as follows:-

".....

X. For that the Ld. Sole Arbitrator had failed to take into consideration that the Respondent had filed time barred counter claims filed by the respondent. The respondent has preferred the counter claim on 14<sup>th</sup> September 2022. Admittedly, the respondent had worked till 31<sup>st</sup> March 2015. Therefore, cause of action starts from 31<sup>st</sup> March 2015 for three years. Also on 28<sup>th</sup> March 2017 the respondent writes to the Department that he does not have any claim, meaning thereby there is no dispute contrary to what has been claimed in the counter claim. Therefore, the Ld. Sole Arbitrator has allowed the counter claims which is not only barred by law of limitation but also allowed the counter claim without any disputes as per the letter of Respondent dated 28<sup>th</sup> March 2017.

....."

**7.** There are reasons stated by the Arbitral Tribunal for overruling the objection on the question of limitation upon appreciating the materials and records available.

**8.** It is admitted before us that the impugned judgment was passed by the Commercial Court, Gangtok, under section 34 without calling for records from the Arbitrator. We note that an Arbitrator had earlier been appointed; however, the proceedings before the said Arbitrator were not taken to a logical conclusion before the present arbitral award came to be passed by the subsequent Arbitrator. The question is whether the Commercial Court, Gangtok, was justified in overruling the objection on the ground of limitation without calling for the records.

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**9.** There may not be much dispute on the fact that the question of limitation is not required to be expressly pleaded as a defense. If, on the face of the records, the Court can take note of the plea of limitation and if it can arrive at a conclusion that it is barred by limitation, it can very well reject such a claim.

**10.** The question of limitation is the question of facts and law. The law of limitation is very clear from Section 3 of The Limitation Act, 1963, and it is based on public policy.

**11.** But we are also mindful of an issue relating to waiver of plea of limitation in the context of arbitration. Unlike a Court established as a public forum by the State, whose policy is to encourage litigation by litigants who are alert and vigilant about their rights, a question may arise before the Arbitral Tribunal as to whether a plea of limitation can be waived without raising such a plea, since such a forum is a private forum.

**12.** Anyway, first of all, the Court under Section 34, on the face of the record, will have to address the issue of whether the claim is barred by limitation or not. It is only when it arrives at a finding that the claim is barred by limitation that, perhaps in the context of arbitration, a plea of waiver can be considered.

**13.** We are not addressing any of these issues for now, for the simple reason that the present order passed by the Commercial Court, Gangtok, is contrary to the statutory provisions. The Court entertaining the application under Section 34 is required, imperatively, to look into the records of the Arbitral Tribunal to satisfy whether any grounds under Section 34 have been made out

or not. Without calling for records, and merely on the basis of the arbitral award and upon hearing the parties, the Court cannot arrive at a conclusion with regard to any of the grounds raised under Section 34. As discussed in the case of ***Oil and Natural Gas Corporation Limited, through its General Manager (Production) Vs. H.N. Roy, through its proprietor Mr. Haribansh Narayan Roy***<sup>1</sup>:-

“.....

6. **Sub-section 2 of Section 34 of Arbitration and Conciliation Act, 1996 clearly reveals that the Court may set aside the award if the party making the application establishes on the basis of the record of arbitral tribunal meaning thereby that the Court certainly requires the record to establish the case of the parties. In view of that the arbitral record is necessary to decide the lis and to ascertain exact nature of dispute that can be through the record of the arbitral proceeding.** This aspect of the matter has already been settled by Hon'ble Supreme Court in the case of Alpine Housing Development Corporation Pvt. Ltd. v. Ashok S. Dhariwal, 2023 SCC OnLine SC 55, wherein at paragraph No. 24 it has been held as under:

24. The ratio of the aforesaid three decisions on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; **an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator,** however, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties; the cross-examination of the persons

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<sup>1</sup> 2025 SCC OnLine Jhar 1994.

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swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary.

7. In view of the above judgment of Hon'ble Supreme Court and further reading Sub-section 2 of Section 34 of Arbitration and Conciliation Act, 1996, **it is crystal clear for deciding the dispute under Section 34 the record is necessary and the statute is very much clear.**

.....”

(emphasis supplied)

**14.** Thereafter, the Hon'ble Supreme Court in ***Emkay Global Financial Services Limited v. Girdhar Sondhi***<sup>2</sup> and ***Canara Nidhi Limited v. M. Shashikala and Others***<sup>3</sup> has clarified that an application under Section 34 will not ordinarily require anything beyond the record that was before the arbitrator. This itself makes it abundantly clear that calling for the arbitral record is an essential requirement under Section 34 of the Act.

**15.** That being so, the present matter has to go back to the Commercial Court, Gangtok, for reconsideration of the matter afresh after calling for the records from the Arbitral Tribunal.

**16.** Accordingly, the impugned judgment of the Commercial Court, Gangtok, is set aside and a direction is issued to reconsider the matter afresh on all issues raised within two months from the receipt of the records from the Arbitral Tribunal.

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<sup>2</sup> (2018) 9 Supreme Court Cases 49.

<sup>3</sup> (2019) 9 Supreme Court Cases 462.

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**17.** The parties are directed to appear before the Commercial Court, Gangtok, on 01<sup>st</sup> June, 2026. Thereafter, the Court shall call for the records from the Tribunal and proceed with the matter afresh by hearing all the issues raised.

**18.** Ordered accordingly.

**19.** Trial Court records shall be remitted back to the Commercial Court, Gangtok.

**(Bhaskar Raj Pradhan)**  
**Judge**

**(A. Muhamed Mustaque)**  
**Chief Justice**

Approved for Reporting: Yes/~~No~~

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