**IN THE HIGH COURT AT CALCUTTA**

**COMMERCIAL APPELLATE DIVISION**

**ORIGINAL SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**
And
**The Hon'ble Justice Md. Shabbar Rashidi**

**AO COM/21/2026**

**With**

**AP/1097/2013**

**(Old No. APO/65/2024)**

**Steel Authority of India Limited-IISCO Steel Plant**

**Vs.**

**Balaji Industrial Products Limited**

For the Appellant :Mr. Dhruhba Ghosh, Sr. Adv.
Mr. Arijit Basu, Adv.
Ms. Ajeyaa Choudhury, Adv.

For the Respondent : Mr. Jishnu Saha, Sr. Adv.
Ms. Sulogna Mukherjee, Adv.
Mr. Tanay Agarwal, Adv.
Ms. Darshana Sett, Adv.

Hearing Concluded on : June 24, 2026
Judgement on : July 9, 2026

**DEBANGSU BASAK, J.:-**

**1.** Appellant has assailed the judgment and order dated August 8, 2023 passed in AP No. 1097 of 2013.

**2.** By the impugned judgment and order, learned Single Judge has dismissed the petition under Section 34 of the Arbitration and Conciliation Act, 1996 of the appellant

challenging the award passed by the learned Sole Arbitrator dated June 19, 2013.

**3.** Learned Senior Advocate appearing for the appellant has contended that, the parties entered into the contract for sale of 60,000 metric tonnes of run of mines (iron ores) on February 26, 2005. The contract had provided that the sale would take place in two tranches of 30,000 MT each.

**4.** Learned Senior Advocate appearing for the appellant has submitted that, the contract between the parties was such that, the respondent was required to pay for the first tranche of 30,000 metric tonnes. After having paid for the same the respondent was required to take delivery of the 30,000 metric tonnes within the stipulated time. Likewise, for the second tranche of 30,000 metric tonnes, the respondent was required to first pay and then take the delivery within the specified time.

**5.** Learned Senior Advocate appearing for the appellant has submitted that, the respondent did not lift the entirety of the 30,000 metric tonnes of the first tranche within the stipulated time. Respondent had failed to take delivery of 1,564 metric tonne out of 30,000 metric tonnes of the first

tranche. He has pointed out that the respondent did not pay for the second tranche at all.

**6.** Learned Senior Advocate appearing for the appellant has contended that, in respect of delivery of the first tranche of the 30,000 metric tonnes, time to lift the materials was extended twice up to August 29, 2005. He has referred to the terms and conditions of the Letter of Intent dated February 26, 2005. He has pointed out that, the payment was made on March 9, 2005 and the delivery order was issued on March 16, 2005.

**7.** Learned Senior Advocate appearing for the appellant has referred to Sections 51 and 54 of the Contract Act, 1872. He has submitted that, the learned Arbitrator failed to take into considerations such provisions. He has contended that, under the contract, payment preceded the delivery of the material. In the facts and circumstances of the present case, since, the respondent did not pay for the second tranche, the question of compensation for non-delivery of the second tranche of the 30,000 metric tonnes does not arise. He has contended that, the obligation of the appellant to deliver the second tranche of 30,000 metric tonnes would arise only after the respondent had paid for the same. The respondent not

having paid for the 30,000 metric tonnes, the question of the appellant being responsible to pay damages for the same does not arise.

**8.** Learned Senior Advocate appearing for the appellant has contended that, the respondent had delayed in taking the delivery of the first tranche of 30,000 metric tonnes. Since, the respondent did not pay for the second tranche of the 30,000 metric tonnes, appellant was constrained to terminate the contract between the parties. He has referred to the letter of termination dated October 24, 2005 in this regard.

**9.** Learned Senior Advocate appearing for the appellant has referred to the list of dates. He has contended that, the failure to lift the materials was on the part of the respondent. In any event, the appellant cannot be made to pay for materials which, the respondent did not pay. The question of damages in such context does not arise. Moreover, the award has not given any cogent reasons for granting the damages as claimed by the respondent.

**10.** Learned Senior Advocate appearing for the appellant has contended that, the appellant furnished a bank guarantee for the sum of Rs. 5.83 crores with the Registrar, Original Side in terms of the order dated September 10, 2024. He has

contended that, on the present application being allowed such bank guarantee be directed to be refunded.

**11.** Learned Senior Advocate appearing for the appellant has referred to the award dated June 19, 2013. He has contended that, the respondent approached the Arbitral Tribunal with seven heads of claims. The Arbitrator had allowed three heads of claims of the appellant. The Arbitrator had rejected the counter claims. He has contended that, there was no evidence before the learned Arbitral Tribunal to allow any of the three heads of claims of the respondent.

**12.** Learned Senior Advocate appearing for the appellant has contended that, the award does not contain any reason as to why damages were awarded by the learned Arbitrator. He has pointed out that, in any event the respondent has failed to establish damages by way of cogent evidence.

**13.** Learned Senior Advocate appearing for the respondent has referred to the documents disclosed before the learned Arbitrator. He has contended that, the contract was for sale of 60,000 metric tonnes. He has pointed out that, the respondent is a consumer of the materials put up for sale by the appellant. Therefore, it was in the interest of the

respondent that, it had taken delivery of the entire quantity within time.

**14.** Learned Senior Advocate appearing for the respondent has submitted that, there were labour troubles and other issues in the organization of the appellant which had prevented timely delivery of the materials in the first tranche to the respondent. He has referred to various correspondence issued between the parties in this regard.

**15.** Learned Senior Advocate appearing for the respondent has referred to the special terms and conditions of the contract. He has contended that, the materials put up for sale were stated to be available in the present stock of the appellant, which was not the ground reality.

**16.** Learned Senior Advocate appearing for the respondent has submitted that despite such assurances appearing in the special condition of contract, no delivery of the first tranchee was made available for the two months subsequent to the date of issuance of the delivery order due to labour unrest at the mines of the appellant.

**17.** Learned Senior Advocate appearing for the respondent has drawn the attention of the Court to the statement of the

claims. He has pointed out that out of seven claims, three were allowed namely claims (b), (c) and (e).

**18.** Learned Senior Advocate appearing for the respondent has referred to the Minutes of the Meeting dated August 30, 2005. He has contended that in such meeting, the respondent agreed to deposit the purchase price for the second tranche provided, interest for two months with regard to the delay in delivery of the first tranche and that, assurances were given that interest will be paid as well as delivery period extended if in future there was any industrial relation problem.

**19.** Learned Senior Advocate appearing for the respondent has drawn the attention of the Court to the Letter of Termination dated October 24, 2005. He has pointed out that, the Letter of Termination dated October 24, 2005 was not in terms of the contract.

**20.** Learned Senior Advocate appearing for the respondent has contended that, the award dated June 19, 2013 contains cogent reasons for the grant of the claims of the respondent. He has contended that, once the learned Arbitral Tribunal arrived at a finding that the termination was not in accordance with the contract, respondent was entitled to the claims as awarded.

**21.** Learned Senior Advocate appearing for the respondent has contended that, the impugned judgment and order contains cogent reasons. He has contended that, the jurisdiction of the Court under Section 37 of the Act of 1996, is to oversee as to whether or not Court under Section 34 of the Act of 1996 applied the correct parameters. In the facts and circumstances of the present case, he has submitted that, it cannot be said that, the impugned judgment and order suffers from any infirmity.

**22.** Appellant had issued a notice inviting tender dated January 12, 2005 for lifting 60,000 metric tonnes of iron ores (run of mines) from Gua mines in two tranches of 30,000 metric tonnes each upon deposit of the price in advance.

**23.** Respondent had participated in such tender process. Appellant had declared the respondent as a successful bidder in such tender process.

**24.** On the respondent being declared as the successful bidder, appellant had issued a Letter of Intent dated February 26, 2005 for lifting the 60,000 metric tonnes of iron ores at the rate of Rs. 807 per metric tonne. The Letter of Intent dated February 26, 2005 had specified the contract period to be 90 days from the date of the issuance of the first delivery order. It

had required security deposit to be made by the respondent and such security deposit would be retained by the appellant till completion of the contract. It had prescribed the terms of the payment requiring the respondent to pay the full value of 30,000 metric tonnes within 14 days from the date of the Letter of Intent. Payment of balance 30,000 metric tonnes had to be made within 45 days from the date of the issuance of the first delivery order. It had prescribed that failure to deposit such payment will result in termination of the contract without any notice and forfeiture of the security deposit.

**25.** The contract between the parties required the respondent to lift the iron ores from the mines with the help of payloaders on to the trucks of the respondent.

**26.** In terms of the contract between the parties, respondent had deposited sum of Rs. 24,21,000 comprising of Rs. 19,21,000 as security deposit and Rs. 5,00,000 towards earnest money deposit with the appellant on March 5, 2005.

**27.** Respondent had paid a sum of Rs. 2,52,26,760/- to the appellant towards the first tranche of 30,000 metric tonnes on March 9, 2005.

**28.** Appellant had issued the delivery order for the first tranche of 30,000 metric tonnes to the respondent on March

16, 2005. In terms of the contract, the period of 90 days had commenced on March 16, 2005.

**29.** By letters dated March 21/23, 2005, the respondent had requested the appellant for permission to engage the payloader of the respondent at the mines. Appellant had replied to such letters claiming that, materials were ready for loading and that, the political affiliations of the transporter of the respondent and political affiliation of a group of workers were the cause of labour unrest.

**30.** By letters dated March 27, 2005 and April 1, 2005 respondent had informed the appellant that, labour unrest at the site, prevented lifting of the materials. Respondent had requested the appellant to sort out the issues of the workers union of the appellant. Respondent had requested refund towards earnest money deposit and the price of the first lot.

**31.** By letters dated April 4, 2005, April 11, 2005, and May 2, 2005, respondent had requested delivery of the materials. Respondent had pointed out that there were subsisting labour dispute at the site which the appellant had suppressed at the time of entering into the contract. Respondent had requested either delivery or refund.

**32.** The respondent had lifted a portion of the first tranche of 30,000 metric tonnes of iron ores between the period May 26 to May 28, 2005 and June 28, 2005.

**33.** By a letter dated June 7, 2005 respondent had asked for the extension of the delivery period of the first lot. Appellant had by the letter dated June 21, 2005 rescheduled the delivery period of the first lot and requested the respondent to pay for the second lot within July 9, 2005.

**34.** By a letter dated July 5, 2005 respondent had requested for extension of the delivery period of the first tranche of 30,000 metric tonnes for a further period of three months. Respondent had also demanded payment of interest for the period of delay.

**35.** By a letter dated July 18, 2005, appellant had refused to grant further extension of the delivery period and interest for the delayed period. As a special case, appellant had extended the last date for delivery for making the payment of the second lot delivery by till July 25, 2005 and the time for lifting the full 60,000 metric tonnes by September 8, 2005.

**36.** By a letter dated July 18, 2005 respondent had replied and demanded payment of interest for two months. Respondent had asked for extension of time to make payment

of second lot till September 25, 2005 and lifting the total 60,000 metric tonnes till November 8, 2005.

**37.** By letter dated July 22, 2005, appellant had informed respondent that, the problem at the site of the mines was created by transporter of the respondent, and that, appellant had extended the contract as a good gesture. Appellant had taken the stand that, request of the respondent contained in the letter dated July 18, 2005 was beyond contract terms and unacceptable.

**38.** By a letter dated August 22, 2005 respondent had requested for extension of time of the delivery period beyond August 23, 2005 for 15 days since the Weigh bridge of the appellant was not functioning for five days.

**39.** By a letter dated August 24, 2005, appellant had extended the time to lift the balance quantity of the first tranche till August 29, 2005.

**40.** As on August 29, 2005, respondent had taken delivery of 28435.220 out of 30,000 metric tonnes leaving the balance of 1564.780 metric tonnes unlifted. On August 30, 2005, the parties had held a meeting. In such meeting, respondent had demanded two months interest, extension of delivery period in

the event of any problem arising at the mines and extension for delivery period for the first period for ten days.

**41.** By letter dated September 12, 2005 respondent had informed the appellant that if the appellant agreed to the demands made in the meeting on August 30, 2005 then the respondent would deposit the price for the balance 30,000 metric tonnes. In the event appellant did not agree to the terms and conditions of the respondent, appellant should refund the money.

**42.** By a letter dated September 22, 2005 respondent had requested the appellant to refund security deposit and the value of the unlifted materials.

**43.** By a letter dated October 7, 2005 the respondent had requested the appellant to inform as to whether labour problem at the mines were solved or not and requested the appellant to refund the security deposit or to inform the respondent to deposit the balance amount for the respondent to lift the materials.

**44.** By a letter dated October 24, 2005 the respondent had requested the appellant to refund the amount.

**45.** By a letter dated October 24, 2005, the appellant had terminated the contract and forfeited the security deposit.

Respondent had replied to this letter by a letter dated November 23, 2005. Respondent had requested the appellant to refer to the disputes to an arbitrator.

**46.** In the arbitration proceedings, claimants had filed statements of claim making seven heads of claims. Appellant had filed the statement of defence and counter claims. Respondent had filed re-joinder to the appellants counter claim while appellant filed a reply to such re-joinder.

**47.** In the award, dated June 19, 2013, learned Arbitrator has allowed three of the claims of the respondent while disallowing four others. Learned Arbitrator has allowed claims (b), (c), and (e) which are as follows:-

> "*b) a claim of Rs. 13,19,329 on account of the respondent's failure to deliver or allow delivery of 1564.780 metric tonnes of the goods despite having received the full price thereof.*
>
> *c) a claim of Rs. 24,21,000 on account of security deposit wrongfully and illegally forfeited by the respondent.*
>
> *e) a claim of Rs. 1,67,56,163 on account of the excess amount spent by the claimant in purchasing 31564.780/- metric tonnes of the goods from the market."*

**48.** In the award, learned Arbitrator has noted the principal dispute between parties. Learned Arbitrator had felt it necessary to ascertain which of the two parties was responsible for the preventing the delivery of the balance portion of the materials. Learned Arbitrator has held that, the finding in such respect would reveal which of the parties was responsible for the breach of the contract.

**49.** Learned Arbitrator has noted clause 6 of the contract and the evidence led by the parties on the issue of delivery as also the contention of the respective parties. Learned Arbitrator on detail scrutiny of such matters, has found that the labour disputes were the cause for the delay in delivery and that, labour disputes at the concerned mine was not a situation which had occurred on spur of the moment. Learned Arbitrator has held that, such labour disputes were simmering and it took great shape when the respondent attempted to take delivery from the mine's face. Learned Arbitrator has also held that, delivery was not given from the side gates to the mines in spite of the request of the respondent for the same.

**50.** Learned Arbitrator has held that, it was the obligation of the appellant to give delivery of the materials. Appellant has failed and neglected to establish that it had 60,000 metric

tonnes of iron ores ready for delivery at any time throughout the contractual period. Not having such contractual amount of materials available during the contractual period learned Arbitrator has held that the appellant was in breach of the contract in failing to deliver 60,000 metric tonnes of iron ores.

**51.** Learned Arbitrator has held that, the force majeure clause in the contract was rendered inoperative by reason of suppression of labour problems that had existed at the concerned mines. In such circumstances, learned Arbitrator has held that the termination of the contract by the appellant was found to be illegal and such decision was in undue haste and without any application of mind. Learned Arbitrator has thereafter allowed the claims (b), (c) and (e) of the statement of claims.

**52.** Remit of the Court under Section 37 of the Act of 1996 is whether or not the Court under Section 37 of the Act of 1996 exceeded its jurisdiction. In other words, the scope of an enquiry of a Court under Section 37 of the Act of 1996 is narrower than a Court under Section 34 of the Act of 1996. Award when speaking is not to be scrutinized by a Court under Section 37 of the Act of 1996 as a second appellate

authority. Section 34 Court is also not required to examine an award as the first appeal Court.

**53.** Views and findings of the learned Arbitrator recorded in the Award cannot be termed as perverse or patently illegal. The views of the learned Arbitrator are plausible in the factual matrix of the present case. Since the finding of the learned Arbitrator that the appellant acted in breach of the contract, cannot be faulted, the consequent award in terms of claims (b), (c) and (e) of the statement of claims of the respondent, and rejection of the counter claims of the appellant cannot be questioned, at least in a Section 37 scenario.

**54.** Sections 51, 53 and 54 of the Contract Act, 1872, have been referred to by the parties in support of their contentions. Section 51 of the Act of 1872 has stipulated that, a promisor was not bound to perform unless the reciprocal promisee was ready and willing to perform the contract. Section 53 of the Act of 1872 has prescribed the liability of the party preventing the event on which the contract was to take effect. Section 54 of the Act of 1872 has laid down the effect of default as to that promise which should be first performed in a contract consisting of reciprocal promises.

**55.** In the facts and circumstances of the present case, the appellant had held out that 60,000 metric tonnes of iron ores were available at the concerned mines for delivery within the 90 days from the date of payment. Labour disputes subsisting at the mines have not been disclosed by the appellant contemporaneously prior to the execution or at the time of execution of the contract.

**56.** Before the learned Arbitrator, it has been established conclusively that, there were subsisting labour unrest at the concerned mines prior to the contract being entered into. Respondent had from time to time drawn the attention of the appellant as to the existence of the labour problems at the mines of the appellant. These labour problem had prevented the respondent from taking delivery of the entirety of the first tranche within the time stipulated.

**57.** The contract consists of reciprocal promises to be performed by the parties. The commencement of the contract is the promise of the appellant that it had 60,000 mentric tonnes of iron ore ready for delivery. Once such promise is discharged the obligation of the respondent to pay and lift the 60,000 tonnes of iron ore in two tranches within the time stipulated commences. There were subsisting labour disputes

at the mines which the appellant had suppressed. The respondent had paid for the first tranche of 30,000 mentric tonnes and could not lift the entirety thereof within the extended time due to persisting labour disputes.

**58.** Appellant was therefore in breach of the contract in terms of Section 51 of the Contract Act, 1872 and liable under Sections 53 and 54 thereof. Learned Arbitrator has therefore correctly directed refund of security deposit, claim of difference in price for the unlifted materials under the first tranche and compensation for the second tranche.

**59.** Prior to making payment for the second tranche, respondent had pointed out the existence of labour problems and requested for resolution of the same. The materials placed before the learned Arbitrator had not established that, the appellant had taken steps for resolution of the subsisting labour disputes at the site.

**60.** The contract between the parties had reciprocal obligations. Appellant had the obligations to provide 60,000 metric tonnes of materials to the respondent. Appellant had the responsibility of having 60,000 metric tonnes of materials ready for delivery and uplift within 90 days from the date of the first payment. The quantity of materials promised by the

appellant as ready for delivery was not available for delivery in view of the situation prevailing at the concerned mines.

**61.** The inference by learned Arbitrator that, in such factual matrix, of termination of the contract by the appellant was bad in law cannot be faulted. The view of the learned Arbitrator that the respondent was in breach of the contract also cannot be faulted. They are plausible views that can be had in the factual matrix as noted above.

**62.** Learned Arbitrator in the facts and circumstances of the present case has rightly allowed the claim for refund of security deposit, claim for difference in the price of the undelivered portion of the first tranche and the excess amount that the respondent expended to procure the second tranche from the market. Learned Arbitrator has rightly disallowed the counter claim of the appellant after having come to the finding that the appellant was in breach of the contract and that the termination of the contract by the appellant was wrongful.

**63.** Learned Court exercising the jurisdiction under Section 34 of the Act of 1996 has correctly upheld the decision of the Learned Arbitrator and refused to interfere with the award dated June 19, 2013.

**64.** In view of the discussions above, we find no grounds to interfere under Section 37 of the Act of 1996 with the impugned order under Section 34 of the Act of 1996.

**65.** AO COM 21 of 2026 along with all connected matters are dismissed without any order as to costs.

**[DEBANGSU BASAK, J.]**

**66.** I agree.

**[MD. SHABBAR RASHIDI, J.]**