2026:AHC:139677

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HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. ARBITRATION APPLICATION No. - 13 of 2025

Fomento Commodities PTE. Ltd.

…..Applicant(s)

Versus

Fedders Electric & Engineering Ltd.

…..Opposite Party(s)

Counsel for Applicant(s)	:	Pranav Tiwary, Vedant Agarwal
Counsel for Opposite Party(s)	:	Kartikeya Saran, Ujjawal Satsangi

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri Vishal Sheth, Sri Divyansh Singh, Sri Pranav Tiwary and Sri Vedant Agarwal, learned counsels for the applicant and Sri Kartikeya Saran, assisted by Sri Ujjawal Satsangi, learned counsels for the respondent.

2. The instant application has been preferred for the following relief:-

(i) Issue an order or direction directing the Judgment Debtor to pay to the Applicant-Decree Holder the entire decretal amount along with interest as well as the costs imposed along with interest in terms of the decree as per follows:-

a. USD 7,25,496.81 payable by the Judgment Debtor to the Applicant-Decree Holder along with simple interest at the *rate of 5.5% per annum on the sum of USD 7,25,496.81 from 26.04.2024 till 15.08.2025 (date of award) as well as simple interest at the rate of 5.33% per annum on the sum of USD 7,25,496.81 from 15.08.2025 (date of award) until date of payment in full of the above stated sum.*

b. USD 10,620 and SGD 2,180 payable as legal costs and disbursements by the Judgment Debtor to the Applicant-Decree Holder along with interest @ 5.33% p.a., from the date of the award to the date of payment of said costs.

c. SGD 40,233.13 payable as costs of arbitration by the Judgment Debtor to the Applicant-Decree Holder along with interest @ 5.33% p.a., from the date of award to the date of payment of costs.

(ii) Issue an order or direction directing the attachment and sale of the building owned and used as registered office by the Judgment Debtor viz 6 and 6/1, UPSIDC Industrial Area, Sikandrabad, District – Bulandshahar – 203205 (Uttar Pradesh) in the manner prescribed in Order XXI of the Code of Civil Procedure, 1908 towards satisfaction of the decretal amount;

(iii) Issue an order or direction directing the attachment and sale of the building owned and used as corporate office by the Judgment Debtor viz C-15, RDC Raj Nagar, Ghaziabad 201001, Uttar Pradesh (India) in the manner prescribed in Order XXI of the Code of Civil Procedure, 1908 towards satisfaction of the decretal amount;

(iv) Issue an order or direction directing the attachment and sale of the building owned and used as corporate office by the Judgment Debtor viz C-4, Phase-II, Noida, Gautam Buddh Nagar, Noida, Uttar Pradesh, India - 201305 in the manner prescribed in Order XXI of the Code of Civil Procedure, 1908 towards satisfaction of the decretal amount;

(v) Issue an order or direction directing the attachment and sale of the building owned and used as corporate office by the Judgment Debtor viz PL-1 Zone D, Mancheswar Industrial Estate, Bhubaneswar, Khordha, Odisha - 751010 in the manner prescribed in Order XXI of the Code of Civil Procedure, 1908 towards satisfaction of the decretal amount;

(vi) Issue and order or direction directing the attachment of the bank account of the Judgment Debtor bearing bank account number 923030007988476, Bank Name Axis Bank Limited, RDC Rajnagar Branch, Ghqziabad, Uttar Pradesh, Swift Code:

AXISINBB095 in the manner prescribed in Order XXI of the Code of Civil Procedure, 1908.

(vii) Issue an order or direction directing the Judgment Debtor to file an affidavit of assets as on the date of institution of Arbitration as well as the date of swearing the Affidavit in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure, 1908 along with Statement of its Bank Accounts for the last three years within 30 days of the receipt of the notice of the present Execution Application/Petition;

(viii) Issue an order or direction directing the issue of warrant for the arrest and detention in civil prison of Mr. Vishal Singhal (Promoter), Mr. Rakesh Kumar Singhal (Promoter), Mr. Ankit Mittal, Mr. Narendra Kumar Mishra, Mr. Anil Kumar Kaushik, Mr. Sanjeev Kumar Singhal, Mr. Sonal Singhal, Ms. Seema Rastogi, Mr. Pramod Kumar, being key managerial personnel and Authorised Signatories of the Judgment Debtor herein under Order XXI Rule 30 of the Code of Civil Procedure, 1908, in the event the Judgment debtor defaults in paying the decretal amount despite admittedly having the means to do so;

(ix) Issue an order or direction directing to appoint a bailiff/receiver on such terms and conditions as this Hon'ble Court may deem fit to take possession of all assets including bank accounts of the Judgment Debtor and/or sell the same towards realization of the amounts payable under the Award/Decree;

(x) ….

(xi) ….

3. Learned counsel for the applicant submits that the Applicant-Decree Holder (**applicant**) is a duly incorporated company under the laws of Singapore and carries on its business as *inter alia* a commodity trader. He further submits that the Judgment Debtor (**the respondent**) is a duly incorporated company under the laws of India and is engaged in the business of inter alia trading in iron ore. He further submits that the applicant and the respondent entered into two sale and purchase contracts on 15.05.2023 and 08.09.2023, along with their respective addendums for sale and purchase of iron ore fines (hereinafter referred to as, '**the cargo**'). The cargo was supplied by the respondent. On 19.05.2023, USD

10 lacs was transferred as advance amount in terms of 1st contract by the applicant to the account of the respondent. The cargo was supplied under the two contracts by the respondent and all payments towards the supply of cargo were duly remitted by the applicant against the invoices raised by the respondent. Thus, no payment remained pending towards the invoices raised under the two contracts. He further submits that the USD 10 lacs continued to lay with the respondent. The applicant sought refund of the said advance amount, but the respondent refused to refund the same. Thereafter, a dispute arose between the parties pertaining to the refund of the advance amount of USD 10 lacs. He further submits that the clause 13 of the two contracts contains dispute resolution clause, which states that any dispute arising out of the said contracts were to be settled via arbitration with Singapore being the 'Seat' of arbitration under Singapore International Arbitration Centre Rules (hereinafter referred to as, '**the SIAC**').

4. He further submits that on 09.05.2024, a dispute was raised before the SIAC and as there were two claims for the two separate contracts, separate numbers were assigned, being ARB185/2024 and ARB203/2024. On 17.06.2024, the respondent filed its response to the Notice of Arbitration. On 26.09.2024, pursuant to an application made by the Applicant-Decree Holder, the SIAC allowed consolidation of disputes arising under both contracts under a single arbitral reference viz ARB/185/2024. Ms. Elizabeth Birch was appointed as Sole Arbitrator to adjudicate upon the dispute, and the arbitral tribunal was duly constituted on 27.12.2024. On 11.02.2025, Applicant-Decree Holder filed its Statement of Claim before the Arbitral Tribunal. On 17.03.2025, Judgment Debtor filed its Statement of Defence and Counter Claim. On 02.04.2025, Applicant Decree holder filed its Rejoinder to the Statement of Defence and reply to counter claim. On 15.08.2025, the sole Arbitrator passed the final award, allowing the claim of the Applicant-Decree Holder in entirety and awarding costs and interest thereon on the claim. Out of 3 counterclaims of the Judgment Debtor, 2 were allowed on the basis of admission made by the Applicant-Decree Holder in its reply to counter claim, and the amount so awarded were directed to be set off from the claim amount awarded in favour of the Applicant-Decree Holder. The arbitral award was shared with the parties over email. On 21.08.2025, Applicant-Decree Holder sent demand notice along with the copy of the arbitral award to the Judgment Debtor over email as well as registered post. He further submits that the period of limitation to file objections to, or challenge an Arbitral Award is '3 months' under 'Article 34 of the First Schedule of Singapore's International Arbitration Act, 1994' (hereinafter referred to as '**the Singapore Act**'), which according to the service made by the Arbitral Tribunal on the parties ended latest. He further submits that the respondent neither filed any objection against the final award dated 15.08.2025, nor deposited any amount awarded to the applicant pursuant to the final award, despite the applicant having given the demand to this effect vide its demand letter dated 21.08.2025. Therefore, the present application under section 49 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as, '**the Act**').

5. Learned counsel for the applicant further submits that the respondent has failed to deposited the awarded amount, despite service of demand letter dated 21.08.2025. He further submits that the requirement of section 47 of the Act is made out as the respondent has not challenged the award dated 15.08.2025. He further submits that for the enforcement of foreign award, applicant has rightly approached this Court having jurisdiction over the subject matter of award as per the explanation to section 47 of the Act. He further submits that if the respondent seeks to resist enforcement of the foreign award by raising any objection to its enforceability, then onus of establishing such objection rests upon the respondent. The respondent cannot take any objection at the time of enforcement of the award giving a second look to the award or challenging the same on merits as contemplated in explanation II to section 48 of the Act. He further submits that the award is enforceable by this Court. In support of his submissions, he has placed reliance on the judgments of the Apex Court in ***Brace Transport Corporation Vs. Orient Middle East Lines Limited*** [1995 Suppl. (2) SCC 208], ***Pueblo Holdings Limited Vs. Emirates Trading Agency*** [2020 SCC Online Mad. 28544], ***Vijay Karia Vs. Prysmian Cavi Sistemi*** [(2020) 11 SCC 1), ***Shri Lal Mahal Vs. Progetto Grano*** [(2014) 2 SCC 433] and ***Renusagar Power Co. Vs. GE Co.*** [1994 Supp. (1) SCC 644].

6. Shri Kartikeya Saran, learned counsel for the respondent has vehemently opposed the submission made by the learned counsel for the applicant. He further submits that the first contract was entered into between the parties on 15.05.2023; wherein, the price was mentioned as provisional base price, and the final price would be determined on the shipment date and laycane schedule as were uncertain, subject to revision. The sum of USD 10 lacs paid by the applicant was treated, in the commercial dealing between the parties as an advance adjustment against the future shipments. He further submits that the said fact is also reflected in the second contract dated 08.09.2023. He further submits that there was not only two contracts, but also there was a third contract as well and in the third contract, there is no mention of any advance payment of USD 10 lacs, which clearly demonstrates that at the time of execution of first and second contracts, the price was not confirmed and the same was determined at the time of shipment being sailed. He further submits that the said fact is evidently clear from the addendum dated 28.09.2023, which ultimately determined the price of the cargo being shipped and sailed on 09.10.2023. Accordingly, the invoices were raised, to which payments were made without any objection by the applicant. He further submits that the advance amount paid by the applicant has already been adjusted and there is no amount outstanding to be paid or refunded by the respondent. He further submits that the award passed has only considered the two contracts and ignored the fact of the third contract, which does not refer to any advance payment as claimed by the applicant. He further submits that had there been any advance due to refund, then the same ought to have been mentioned in the third contract.

7. He further submits that the arbitral tribunal, in contravention of the settled principle of evidence law; wherein, the movement it accept that there were three contracts executed between the parties, but has failed to take note of the third contract. Such approach of the arbitral Tribunal is contrary to the principle of evidence law and therefore, the award itself become non-est in law and un-enforceable in India. He further submits that the award is liable to be refused under section 48(2)(b) of the Act as the arbitral Tribunal ignored the material contractual documents forming part of the same commercial transaction and effectively, rewrote the contract by treating the advance amount as refundable, despite the absence of any such contractual stipulations.

8. He further submits that the arbitral Tribunal failed to consider the third contract, which vitiates the award and renders it contrary to the fundamental policy of Indian law. He further submits that the award passed against the fundamental policy of Indian law and it is violative of basic notions of morality and justice. He further submits that the procedure adopted and the reasoning provided by the arbitral Tribunal is not in consonance with the settled principles of law and justice in India. The award is passed in defiance of the laws of evidence; wherein, the onus to prove the case has been shifted upon the judgement debtor (respondent) without it being discharged by the decree-holder (applicant). He prays for rejection of the instant application.

9. After hearing learned counsel for the parties, the Court has perused the records.

10. It is not in dispute that the parties have entered into a contract on 15.5.2023 for supply of iron ore fines and the last date of shipment was 30.6.2023, which also contemplates the advance payment of 10 lakh USD on 18.8.2003 and date of delivery was changed as 30.8.2023. On 28.8.2023 an addendum was entered into between the parties and the goods were delivered as per the first contract as well as second contract. Thereafter, the applicant sought refund of 10 lakh USD, on refusal of the same the dispute arose between the parties. Thereafter, the matter was referred to the Arbitrator. Award was passed on 15.8.2025 after adjudicating the claim as well as counter claim of the parties. Nothing has been brought on record before this Court that the award was assailed / objected / challenged before any higher court within time but after lapse of period to challenge the said award, the present application has been filed by the applicant for enforcement of the award. The respondent has tried to object the enforcement of the award on the pretext that the Arbitrator has failed to consider the price rise of the goods and the contract contemplates provisional basic price and not best price which requires to be determined at the time of shipment. Further, emphasis has been drawn on behalf of the respondent that there was a third contract in which advance amount has not been adjusted and there is no mention of the amount of 10 Lakh USD. In turn, the respondent tried to emphasis that all the three contracts are internally connected and the arbitral tribunal has overlooked this vital fact while passing the award. The record shows that respondent has failed to challenge the same before the competent court within time.

11. Hon’ble the Apex Court in the case of **Shri Lal Mahal Limited (supra)** has held as under :-

"45. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a 'second look' at the foreign award in the award - enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.

46. In what we have discussed above, even if it be assumed that the Board of Appeal erred in relying upon the report obtained by buyers from Crepin which was inconsistent with the terms on which the parties had contracted in the contract dated 12.05.1994 and wrongly rejected the report of the contractual agency, in our view, such errors would not bar the enforceability of the appeal awards passed by the Board of Appeal.

47. While considering the enforceability of foreign awards, the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Under Section 48(2)(b) the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality. The objections raised by the appellant do not fall in any of these categories and, therefore, the foreign awards cannot be held to be contrary to public policy of India as contemplated under Section 48(2)(b)."

12. Similar view has been taken by the Apex Court in the case of **Vijay Karia and others (supra),** in which it has held as under :-

"101. According to Dr. Singhvi, the tribunal's interpretation of clause 21 of the JVA is perverse. As has been held, referring to some of the judgments quoted hereinabove, in particular Shri Lal Mahal (supra), the interpretation of an agreement by an arbitrator being perverse is not a ground that can be made out under any of the grounds contained in Section 48(1)(b). Without therefore getting into whether the tribunal's interpretation is balanced, correct or even plausible, this ground is rejected.

105. Dr. Singhvi then argued that the tribunal's analysis of contemporaneous conduct is selective and perverse. Without going into any further details in this ground, this argument must be rejected out of hand, as not falling within the parameters of Section 48. Equally, the tribunal's consideration of evidence of key *witnesses being selective and perverse, must be rejected on the same ground.”*

13. Under Section 48(2)(b) of the Act, the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to fundamental policy of Indian law; or the interests of India; or justice or morality. The award has been passed but allegation has been made that the Arbitrator has failed to consider the price of the goods and the contract contemplates provisional basic price and not best price, which remained to be determined at the time of shipment. Further, the third contract does not contemplate or adjustment of advance money. On these grounds alone, the award cannot be said to be contrary to the fundamental policy of India or the interest of India. Therefore, the objections raised by the respondent do not fall in any of these categories mentioned herein above. Therefore, the foreign awards cannot be held to be contrary to public policy of India as contemplated under Section 48(2)(b) of the Act.

14. In the present case, the issue that has been raised by the respondent -judgment debtor is that the tribunal has shifted burden of proof upon the respondent -judgment debtor instead of applicant. On this ground also, the enforcement of foreign award cannot be refused.

15. In view of facts as stated above as well as the law laid down by the Apex Court as stated herein above, the objection raised on behalf of respondent cannot be sustained.

16. In the results, the present application is **allowed** and the respondents are directed to satisfy the foreign award along with interest as claimed within a period of one month from today.

17. Further, the respondent / judgment -debtor, its agent / representative or all the persons claiming through or under it, are restrained from alienating, transferring, encumbering or creating any third-party interest in the properties / assets as disclosed in petition, in any manner whatsoever. In order to preserve the subject matter of the proceedings and to secure the enforcement of award, all the bank accounts shall be attached, till the satisfaction of the final award dated 15.8.2025.

(Piyush Agrawal,J.)

July 13, 2026
Amit Mishra/Rahul Dwivedi