

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL Division
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP-COM -166 of 2025

Damodar Valley Corporation
Vs.
AKA Logistics Private Limited

With

AP-COM -821 of 2024

Damodar Valley Corporation
Vs.
AKA Logistics Private Limited

For the Petitioner : Mr. Amitesh Banerjee, Sr. Adv.
Mr. Swarajit Dey, Adv.
Mr. Saptarshi Kar, Adv.
Ms. Debarati Das, Adv.

For the Respondent : Mr. Ratnanko Banerji, Sr. Adv.
Mr. Rajashi Datta, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Neelash Choudhury, Adv.
Ms. Anuradha Poddar, Adv.

Judgment Reserved on : **11.08.2025**

Judgment Delivered on : **23.09.2025**

Shampa Sarkar, J.

1. This judgment deals with the issue of maintainability of the applications before this court and the prayer for stay of enforcement of the award.

2. AP (COM) No. 821 of 2024 is an application under section 34 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the said Act). The award debtor prayed for setting aside of the arbitral award dated April 24, 2024, which was modified and corrected vide order No. 35 dated May 9, 2024, passed by the Learned Sole Arbitrator. During the pendency of this application, the award debtor also filed AP-COM 166 of 2025, which is an application under Section 36(2) of the said Act, for unconditional stay of the award dated April 24, 2024.

3. As the respondent/award holder raised the issue of maintainability of the said applications on the ground that a single application under Section 34 of the said Act, followed by a single application for stay of enforcement of the award passed in five original arbitral reference was not maintainable, the submissions of the award holder are dealt with first. According to Mr. Ratnanko Banerji, learned Senior Advocate for the respondent, five separate applications for setting aside five original awards should have been filed. The learned Arbitrator had disposed of five arbitral references arising out of five independent contracts. Just like an appeal would lie from every decree passed by a court exercising original jurisdiction to the court authorized to hear appeal from such decision under Section 96 of the Code of Civil Procedure(CPC) so also, 'an' award can be challenged by filing 'an' application, under Section 34 of the said Act. The provision of the CPC would be principally applicable. Section 34 of the said Act also provided that recourse against 'an' arbitral award could be taken by filing 'an' application under Section 34 of the said Act.

4. In the arbitral proceedings, the parties agreed to analogous hearing of the five references. Such agreement was recorded, in the third sitting dated June 28, 2022. Subsection 2 of Section 34 made it clear that a party to an arbitration agreement could make an application for setting aside an arbitral award. Mr. Ratnanko Banerji highlighted the background of the dispute which led to the publication of the award. Although a common award had been passed, it was urged that, five copies of the original award, signed by the learned arbitrator, along with five sets of stamp papers had been delivered to the parties. Such action of the learned arbitrator would clearly indicate that even though the matters were heard and disposed of together, ultimately five awards were made and published.

5. At the pre-reference stage the facts were that, Damodar Valley Corporation (DVC) the award debtor, floated five different notices inviting tender, namely,

- “a. NIT No. KT/SE(C&M)/15-16/MECH/213/CHP/22A/185 dated 19/11/2025;
- b. NIT No. MT/O&M/QSF-05-06-03/DB002/15-16/6500 dated 28/12/15;
- c. NIT No. MT/O&M/QSF-05-06-03/RS/15-16/5053 dated 06/04/15;
- d. NIT No. MT/O&M/QSF-05-06-04/CHP#1-4/TM/15-16/5052 dated 06/04/15 and
- e. NIT No. MT/O&M/QSF-05-06-04/CHP#7&8/SB/13-14/4231 dated 18/12/13.”

6. The respondent/ award holder (AKA) participated in each of the five tender processes and emerged as the successful bidder. DVC issued five separate work orders dated June 10, 2016, August 11, 2016, November 7,

2015, November 5, 2015 and December 8, 2014. Five separate contracts were executed. Thereafter, disputes arose. AKA issued five separate and independent notices under Section 21 of the said Act dated February 8, 2021. The arbitration clause was invoked in respect of each of the contracts, for adjudication of the disputes and differences that had arisen between the parties. DVC did not reply to the notices and AKA filed five separate applications under Section 11 of the said Act, which were registered as AP No. 352 of 2021, AP No. 353 of 2021, AP No. 354 of 2021, AP No. 355 of 2021 and AP No. 356 of 2021. Prayer was made in each of the applications for appointment of a sole arbitrator, for adjudication of the disputes. The applications were heard and disposed of by five separate orders, all dated September 22, 2021. The first paragraph of each of the orders dated September 22, 2021, mentioned the specific date of the agreement which had given rise to the dispute in each case. As regards the conduct of the parties during the reference, Mr. Banerji submitted that by five separate letters dated September 24, 2021, the learned advocate representing AKA, communicated the order dated September 22, 2021, to the learned sole arbitrator. Each of the letters referred to the specific case number (arbitration petition) in respect whereof the appointment had been made. Mr. Ratnanko Banerji submitted that, the claim of Mr. Amitesh Banerjee, learned senior advocate representing DVC, that the parties had agreed to the consolidation of five arbitral references before the learned Arbitrator, was wholly incorrect. The reference to the decision of the Bombay High Court in the matter of - ***Saraswat Coop. Bank Ltd. v.***

Fariruddin Quereshi N. and Ors., reported in **2011 SCC OnLine Bom 245**, by Mr. Amitesh Banerjee was distinguishable on facts. In the matter before the Bombay High Court, all the disputes arising out of the arbitral references, were consolidated on the consent of parties and the arbitrator proceeded with the same accordingly, upon recording such consolidation. In the case before this court, the parties consented to an analogous hearing. Explaining the concept of consolidation of disputes and analogous hearing of the disputes to be different and distinct, Mr. Ratnanko Banerji relied on the decision of the Delhi High Court, in ***S.C Jain Vs. Bindeshwari Devi*** reported in **1997 (42) DRJ 239**. Referring to the minutes of the arbitral proceedings, Mr. Ratnanko Banerji submitted that there was nothing on record to show that the learned arbitrator had ever recorded that the references had been consolidated. Rather, the learned arbitrator, on the agreement of the parties, recorded that the five matters would be considered analogously. In any arbitral proceeding, the parties were the masters of procedure. Once DVC had agreed to analogous hearing, DVC could not turn around and submit that the parties had agreed for a consolidated hearing of the five references. Witness action in the five arbitral proceedings were conducted separately, AKA was the claimant and had adduced one witness, namely Mr. Krishna Gopal Saraf. AKA had filed five separate affidavits of evidence.

7. DVC also filed five separate affidavits of evidence in each of the five arbitral references, through four of its officers as below:-

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AP No.	Name of the witnesses	Numbering of such witness
AP No. 352 of 2021	Shri Anurag Mishra	R.W. -1
AP No. 353 of 2021	Shri Sumesh Kumar	R.W. -2
AP No. 354 of 2021	Shri Rajiv Kumar	R.W. -3
AP No. 355 of 2021	Shri Suresh Mahato	R.W. -4
AP No. 356 of 2021	Shri Rajiv Kumar	R.W. -5

8. In the course of the hearing held on May 5, 2023, the learned sole arbitrator recorded that the advocate for DVC had filed three affidavits of evidence of Mr. Anurag Mishra, Mr. Sumesh Mishra, and Mr. Suresh Mahato in AP No. 352 of 2021, AP No. 353 of 2021, and AP No. 355 of 2021 respectively. That the learned advocate representing DVC had submitted that, the affidavits of evidence in AP No. 354 of 2021 and AP No. 356 of 2021 were ready and the copies thereof had been served upon the learned Advocate on record for AKA. The learned Advocate of DVC, undertook to file the affidavits in the office of the learned arbitrator within a week from the date of such meeting. Thus, the plea of consolidation of the arbitral proceeding was contrary to the records of the meetings held by the learned arbitrator. DVC treated each reference as distinct and separate. That was the reason behind filing five sets of evidence in chief.

9. The learned arbitrator, for the sake of convenience and with the consent of the parties, described the witnesses as RW 1, 2, 3, 4, and 5. Such description was only to avoid confusion as DVC had described each witness in the five different arbitral references as R.W-1. The learned arbitrator was of the opinion that as the matters were being heard analogously, description of each witness as RW 1, would create a confusion. Affidavits of evidence had been filed by Mr. Anurag Mishra, Mr. Sumesh Kumar, Mr. Rajiv Kumar, Mr. Suresh

Mahato, and Mr. Rajiv Kumar in the five references. Each witness of DVC i.e. RW 1 to RW 5, were examined by the learned advocate for DVC and cross-examined by the learned advocate for AKA separately, in respect of each of the arbitral references arising out of AP No. 352 of 2021 to AP No. 356 of 2021. When the mandate of the learned arbitrator had expired, AKA filed five separate applications under section 29A (4) read with Section 29A (5) of the said Act, which were registered as AP No. 659 of 2023, AP No. 660 of 2023, AP No. 661 of 2023, AP No. 662 of 2023, and AP No. 663 of 2023.

10. Thus, even at that stage, when the period of one year had expired after completion of pleadings, the parties continued to understand the references to be separate and distinct. By a common order dated September 13, 2023, the extensions were allowed in all the five references. Ultimately, the hearing was concluded and the five references culminated into five separate original awards dated April 24, 2024. The question of consolidation did not arise as the award categorically indicated the sum of money awarded in favour of AKA in connection with each of the arbitral references. Thereafter, the five original awards signed by the learned arbitrator were served upon the parties, each under a covering letter dated April 26, 2024. The letter dated April 26, 2024, enclosed five separate sets of original stamped signed awards. As there were some typographical errors in the award, on an application filed by AKA in AP No. 352 to 356 of 2021, the learned arbitral tribunal was pleased to pass a procedural order dated May 9, 2024, by correcting the typographical errors. One single application was made for correction of the award, but such

application would not take away the identity and the distinctiveness of each award which was separately delivered to the parties. Even though, the five references were disposed of by a single/common award, the award holder/ AKA, filed separate applications for execution of the award. Once the execution proceedings had been filed, DVC decided to file AP-COM 166 of 2025 seeking unconditional stay of the award. A single application for setting aside the award as also a single application for stay was not only contrary to the meaning and purport of the expression ‘an’ arbitration agreement, but also contrary to the definition of “party” to an arbitration agreement. Under the said Act, an arbitration agreement had been defined as an agreement by the parties to submit to arbitration all or certain disputes which would arise in future. Party was defined as a party to an arbitration agreement.

11. In the instant case, five different notice inviting tenders had been floated by DVC. AKA participated in each of such tender process and emerged as the successful bidder. Five separate work orders were issued and each work order had an arbitration clause. Thus, the parties hereto entered into five separate arbitration agreements and were signatories to each agreement. Distinguishing the decisions cited by Mr. Amitesh Banerjee, Mr. Ratnanko Banerji submitted that the decision in ***Pasl Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd.***, reported in ***(2021) 7 SCC 1***, was on the principle of party autonomy in designating a seat of arbitration outside India, even when both parties happened to be Indian nationals. The decision would not apply in the instant case. In the case in hand, the parties consented to analogous hearing

and as such, party autonomy was maintained. The decision in ***Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., and Ors.*** reported in **(2017) 7 SCC 678** was distinguished on the ground that, in the case in hand, the parties did not agree to a consolidated hearing. ***Paramjeet Singh Patheja vs ICDS Ltd.*** reported in **(2006) 13 SCC 322**, was distinguished on the ground that the issue before the Apex court was whether an award was a decree of a civil court or not. Such issue was not germane for decision in the present proceeding. ***Sundaram Finance Ltd. v. Abdul Samad and Anr.*** reported in **(2018) 3 SCC 622**, was distinguished and it was contended that, the same did not have any manner of application.

12. Mr. Ratnanko Banerji thus, concluded that a single application filed by DVC under Section 34 of the said Act of 1996, challenging five original awards was misconceived and not maintainable in law. For similar reasons, a single application filed by DVC under section 36(2) of the said Act for stay of operation of five original awards dated April 24, 2024, as corrected on May 9, 2024, was also misconceived and not maintainable in law. Mr. Banerji submitted that both the applications should be dismissed.

13. Mr. Amitesh Banerjee, Learned Senior Advocate, appeared on behalf of the award debtor (DVC) and submitted that what transpired between the parties prior to the commencement of arbitral proceedings would not be relevant for determination of the question of maintainability of the applications before the court. Consolidation of the five references, took place during the arbitral proceeding. The parties consented to club the matters and the learned

arbitrator had recorded so in the minutes of the third sitting. The third sitting was held on June 28, 2022, when both the parties jointly suggested that, as the matters were almost similar and identical on the questions of law and facts, they should be considered analogously. The arbitrator accepted such submission and directed that the matters shall be heard analogously. The five matters had been consolidated later and one common award was passed. In the fourth sitting held on July 26, 2022, the learned arbitrator recorded that by consent of parties, all the five matters would be taken up together and AP No. 353 of 2021 would be treated as the lead matter. The references were consolidated for all practical purposes even though the word consolidation was not used. The use of the expression 'analogous', could not invalidate the intention of the parties to consolidate the references. AKA produced only one witness, and five separate affidavits of evidence, although the examination-in-chief and cross examination were recorded only in the lead matter, that is, in AP No. 353 of 2021. The cross examination was concluded in the 11th sitting. In order to avoid confusion, the witnesses produced by DVC were marked serially from RW 1 to RW 5. The individual reference numbers in the deposition sheet would not make any difference, inasmuch as, the tenor of evidence-in-chief and cross examination would indicate that evidence was actually led by both parties in the lead matter. The arguments commenced from the 27th sitting which was held on November 22, 2023, and continued up to the 32nd sitting which was held on January 10, 2024. On April 24, 2024, that is, at the 34th sitting, the learned arbitrator passed a common award. The minutes

clearly recorded at paragraph 2 that, “the stamped arbitral award”, was signed and pronounced in the said sitting. Paragraph 3 also mentioned that “the stamped arbitral award” would be sent to the parties. Paragraph 6 recorded that the arbitral proceeding stood terminated. Only one minute was prepared and the case number mentioned in the award was AP No. 352 to 356 of 2021. The learned arbitrator issued one forwarding letter addressed to the parties, wherein the case number was recorded as AP No. 352 to 356 of 2021. Only to avoid the issue of improper stamping, five sets of stamp papers were affixed on each copy of the said award. The award disposed of five references together. Five copies of one common award was issued in five sets. Such action of the learned arbitrator would not convert a single award to five separate awards. It would be impossible to identify which award was passed in which reference, as the reference numbers in each of the five sets was mentioned as AP No. 352 to 356 of 2021. The respondent filed a single application for correction of the award on 5th May 2024. Assuming the respondent's contention that five different awards had been passed disposing of five references to be correct, in that case, upon receipt of the five sets, five separate applications for correction of the award should have been filed. This was not done. A single application had been filed. This indicated that the respondent/award holder also understood the award to be a composite award, disposing of five references, upon consolidation of the references. On May 9, 2024, the 35th sitting was held and the application under Section 33 of the said Act filed by the award holder, was taken up for hearing.

14. In paragraph 2 of the minutes of the 35th sitting, the learned arbitrator recorded that, the 'arbitral award' had been made and published on April 24th, 2024. Paragraph 3 recorded that there were some typographical errors in the 'award'. "Paragraph 4 recorded that the typographical errors in the arbitral 'award' were corrected. The relevant portion is quoted below:-

"2. The arbitral award was made and published on April 24, 2024.

3. My attention is drawn by Mr. Neelesh Choudhury, learned advocate for the claimant, that there are some typographical errors in the award. I am informed by Mr. Choudhury that information with respect to suggested typographical errors was forwarded to the learned advocate for the respondent.

3. The typographical errors in the Arbitral Award dated April 24, 2024 are corrected as under:-

a) In the 3rd line, at Page-4, Para-8, the work order number is wrongly recorded as 'MT/O&M/QSF-05-07-04/CHP/Unit Nos.7 & 8/SB/14-15/390 dated December 08,2014', which is corrected as 'MT/O&M/QSF-05-07-04/CHP # 1-4/TM/15-16/463 dated 5th November, 2015';

b) In the 2nd line at Page-6, Para-19, the phrase 'difference in minimum including VDA ...' is corrected as 'difference in minimum wage including VDA....';

c) In the 1st line, at Page-8, Para-30, the name of the claimant's sole witness is wrongly mentioned as 'Sri Krishna Kumar Safar, which is corrected as 'Krishna Gopal Safar';

d) In the 3rd line, at Page-8, Para-30, the name of the respondent's witness is wrongly recorded as 'Sumesh Mishra', which is corrected as 'Sumesh Kumar';

e) Similarly, at the ordering portion at Page-28, Para (d), the awarded amount in A.P. No. 355 of 2021 is wrongly recorded as 'Rs. 73,83,493', which is corrected as 'Rs.73,80,493/-"

15. Paragraph 5 recorded that the above corrections shall be treated as part of the original 'award' dated April 24th, 2024. Thus, having understood the award to be a composite one, disposing of five references which had been

consolidated, DVC filed a single application challenging the award dated April 24th, 2024 and May 9th, 2024. The minutes would not indicate that the matters retained their identity and distinctiveness. The learned arbitrator recorded that it was a common award. The cause title itself would indicate the commonality. The parties were the master of the proceeding and on their suggestion, the five proceedings were taken up together and thus consolidated.

16. The learned arbitrator recorded in the award that, the observations, directions and the award concluded the arbitral references. On a bare reading of the award and the minutes, it would be evident that all the five arbitral references were concluded by one common award and not five awards. Moreover, had the matters not been consolidated, the question of the parties agreeing to AP No. 353 of 2021 as the lead matter would not arise. The parties made submissions only in one matter which itself indicated consolidation. The submission of Mr. Ratnanko Banerji that, consolidated hearing and analogous hearing had different meaning and connotation was refuted by Mr. Amitesh Banerjee on the ground that, the nomenclature of the term used by learned arbitrator was immaterial. The learned arbitrator recorded that the parties consented that the matters should be taken up together and AP No. 353 of 2021 would be the lead matter as common questions of fact and law were involved. Accordingly, the learned arbitrator passed the composite award and the numbers of the references were also mentioned in a consolidated manner. From the records of the proceeding and the minutes, it would be crystal clear

that one consolidated proceeding had been held and a common award was passed.

17. The petitioner relied on the following decisions; (i) **Saraswat Co-operative Bank (supra)** on the proposition that one application under Section 34 was held to be maintainable against a common award which disposed of 2000 arbitral proceedings; (ii) **Paramjeet Singh Patheja vs ICDS Ltd.** reported in **(2006) 13 SCC 322**, on the proposition that an award was not a decree and the provisions of the CPC would not be applicable; (iii) **Pasl Wind Solutions Pvt. Ltd. vs Ge Power Conversion India Private Limited** reported in **AIR 2021 SC 2517**, on the proposition that party autonomy was the guiding principle. Both the parties agreed and suggested to the learned arbitrator that the five matters should be consolidated and treated as a composite reference. Under such circumstances, filing of a single application for setting aside the common award was maintainable in law.

18. Considered the rival contentions of the parties. The only issue is whether one application under Section 34 of the Arbitration and Conciliation Act 1996, could have been filed for setting aside the award dated April 24, 2024, which was corrected on May 9, 2024 and consequently one application for stay of enforcement of the award should be entertained by the court. Although, there were five invocations, five applications under Section 11 of the said Act, five orders of reference and five orders of extension of the mandate of the learned arbitrator, the records reveal that, in the meeting held on January 18, 2022, several directions were given for completion of pleadings, inspection of

documents etc. and a single minute was prepared in respect of five references. The reference number of the matter was recorded in the minutes as AP No. 352 to 356 of 2021. On June 28, 2022, the third sitting was held and the arbitrator recorded that both the parties had jointly suggested that, as the facts were almost similar and identical questions of law and fact were involved, the five matters should be considered analogously. The learned arbitrator accepted the suggestion and directed the matters to be considered analogously. From the subsequent facts and records, it would appear that the five matters were actually dealt with and disposed of in a composite manner by a single composite award. On July 26, 2022, at the fourth sitting, the learned arbitrator recorded that by consent of the parties, all the five matters would be taken up together and AP No. 353 of 2021, would be treated as the lead matter. Evidence was recorded in the lead matter. The above facts demonstrate that, the learned arbitrator, as also the parties understood that the issues involved would be dealt with in a composite manner and arguments would be advanced in AP No. 353 of 2021. The award also indicates that the learned arbitrator considered that individual claims had arisen out of five contracts and those claims were to be decided in the proceeding before him. Paragraph 1 of the award is quoted below :-

“1. The aforesaid arbitration proceeding have been initiated by the claimant in connection with several contracts awarded by the respondent. The respondent awarded annual service contracts to the Claimant for the job of liaison, loading, supervision and unloading of coal rakes for various thermal power stations of the respondent.”

19. Paragraphs 2 and 3 mentions the reliefs claimed as a whole, which are quoted below:-

“2. The reliefs sought for in all the arbitration proceedings are towards: (a) non reimbursement of a percentage of the difference in minimum labour wages paid by the Claimant to its workers after revision by the Government of India, and (b) deduction of Punitive Overloading Charges (POL charges) including the base freight for the overloaded coal, from the bills of the Claimant.

3. In all the matters relief of reimbursements of 50% (Fifty per centum) of the differences of the wages paid by the claimant to the workers is prayed for. In addition, in AP No.353 of 2021 recovery of the penalty imposed by the Railways on the respondent and deducted by the respondent from the bills of the claimant is prayed for.”

20. Paragraph 4 records that by consent of parties, AP No. 353 of 2021 was treated as the lead matter and parties had advanced arguments in the lead matter. In paragraph 10, the learned arbitrator records that the contract was initially for a year and then extended from time to time. The dates when the contract ended for each of the references were also mentioned in the said paragraph. The paragraphs are quoted below:-

“4. By consent of the parties, AP no. 353 of 2021 was treated as the lead matter and parties have advanced arguments in AP no. 353 of 2021 in respect of both the claims.

* * *

10. All contracts were, initially, for one year. The respondent, however, extended all the contracts from time to time. The contracts ended on September 09, 2017 in AP No. 352 of 2021, on July 15, 2019 in AP No. 353 of 2021, on May 15, 2018 in AP No. 354 of 2021, on May 24, 2018 in AP No. 355 of 2021 and on September 15, 2017 in AP No. 356 of 2021.”

21. In paragraph 12, the learned arbitrator narrated the provisions of the contracts in a composite manner. Paragraph 12 is quoted below:-

“12. The contracts, inter alia, provide for (a) payment of minimum wages by the claimant to its workers including revised minimum wages and (b) claimant would be subjected to deduction of 20% of the POL charges,

which the railways would impose on the respondent for carriage of coal. Such deductions are to be made from the bills of the claimant.”

22. Paragraph 13 of the award mentions the relevant clause relating to payment of minimum wages, viz, clause 20 of Annexure IV and the claim for reimbursement of 50% of the difference in the wages paid by the claimant to the workers.

23. Thus, the learned arbitrator also proceeded on the basis that one common clause would be applicable in respect of the claims in all the references seeking reimbursement of 50% of the difference in the wages paid by AKA. The only other additional issue was with regard to the deduction of punitive overloading charges, (POL charges) which was an additional claim in the lead matter. Paragraph 15 starts with the recording as follows:-

“15. The brief facts, common in all proceedings are:”

24. Thus, the facts were also recorded and dealt with in a consolidated manner. Paragraphs 17, 18 and 19 deal with the facts which led to the claim for 50% reimbursement of the differences of the wages paid by AKA to the workers. Paragraphs 21 to 24 deal with the claim for recovery of POL charges, in respect of the lead matter. Paragraph 32 dealt with the oral submissions.

Paragraphs 17-24 and 32 are quoted below:-

“17. Being faced with the statutory obligation to pay increased wages due to revision, the claimant and other similarly circumstanced contractors/agencies working with the respondent, made representations to the respondent that due to hike in minimum wages, the contractors were not in a position to absorb such unprecedented wage hike. After considering such representations, the respondent, through its office order No. EDCON/OS and U/OS-1/604 dated April 28, 2017, agreed to reimburse 50% of the difference in minimum wage including VDA plus

statutory elements of wages (EPE, ESI and Bonus only), with effect from January 19, 2017.

18. Adhering to respondent's office order of April 28, 2017, the claimant implemented the revision in minimum wages to the workers engaged while executing the contracts at various Power Plants of DVC for the aforesaid jobs.

19. The respondent did not reimburse the claimant to the extent of 50% of the difference in minimum including VDA plus statutory elements of wages (EPE, ESI and Bonus) as per the office order of April 28, 2017.

20. The claimant made several communications for reimbursement. No response was received from the respondent.

21. During execution of the contract in AP No. 353 of 2021, the claimant raised running account bills from time to time like the other contracts. The claimant discovered that the respondent had deducted from the bills of the claimant, POL charges, levied by the Railways, without excluding the base freight of the overloaded coal from the R.A. bills of the claimant.

22. In such manner, the respondent, recovered a sum of 7.40,33,935/- (Rupees forty lakh thirty three thousand nine hundred thirty five) only from the RA. Bills of the claimant.

23. The claimant objected to the recovery of POL without excluding the base freight in the letters dated March 30, 2017, May 10, 2017, October 20, 2017 and December 18, 2017, addressed to the respondent.

24. The respondent is yet to refund the said sum deducted and recovered by them from the RA bills of the claimant. The respondent did not reply to any of the letters of the claimant and did not refund the said amount deducted from the RA bills of the claimant.

* * *

32. During oral arguments, the claimant made submissions claiming wage reimbursement for the period January 19, 2017 to September 9, 2017 in AP No 352 of 2021, January 19, 2017 to July 15, 2019 in AP No. 353 of 2021, January 19, 2017 to May 15, 2018 in AP No. 354 of 2021, January 19, 2017 to May 24, 2018 in AP No. 355 of 2021 and January 19, 2017 to September 15, 2017 in AP No. 356 of 2021. The claimant has, additionally, claimed an award towards refund of wrongful POL charges deducted from the bills of the claimant."

25. The learned arbitrator recorded the facts and submissions made by the learned advocate for the respective parties, in a composite manner. The

submissions as have been recorded, indicate that composite arguments were advanced by the parties without treating each of the reference as a separate case. In all the reference, the same facts and law fitted in. Paragraph 35 onwards, the learned arbitrator discussed the facts, the law, the submissions, the judicial decisions which were cited by the parties and decided the issues in a composite manner. The learned arbitrator summarized the issues, the claims and recorded that upon consideration of all materials, including oral and documentary evidence and taking into consideration the authorities cited by the parties, the award was published. Paragraph 74 is quoted below:-

“74. To summarise, the Arbitral Tribunal upon consideration of all materials on record including all pleadings, oral and documentary evidence, and taking into consideration all authorities cited by the respective parties, awards as follows: -

(a) In AP No. 352 of 2021, there will be an award of ₹.25,05,899/- (Rupees twenty five lakh five thousand eight hundred ninety nine) only, in favour of the claimant and against the respondent towards non-reimbursement of minimum labour wages.

(b) In AP no. 353 of 2021, there will be an award of ₹.40,33,935/- (Rupees forty lakh thirty three thousand nine hundred thirty five) only, in favour of the claimant and against the respondent towards illegal deduction of POL charges and ₹.1,49,68,154/- (Rupees one crore forty nine lakh sixty eight thousand one hundred fifty four) only, towards non-reimbursement of minimum labour wages, in total, ₹.1,90,02,089/- (Rupees one crore ninety lakh two thousand eighty nine) only.

(c) In AP No. 354 of 2021, there will be an award of ₹.72,05,547/- (Rupees seventy two lakh five thousand five hundred forty seven) only, in favour of the claimant and against the respondent towards non-reimbursement of minimum labour wages.

(d) In AP No.355 of 2021, there will be an award of ₹.73,83,493/- (Rupees seventy three lakh eighty three thousand four hundred ninety three) only, in favour of the claimant and against the respondent towards non-reimbursement of minimum labour wages, and

(e) In AP No. 356 of 2021, there will be award of ₹.34,29,220/- (Rupees thirty four lakh twenty nine thousand two hundred twenty) only, in favour of the claimant and against the respondent towards non-reimbursement of minimum labour wages.

(f) There shall be an award for simple interest @ 9% (nine per centum) on the awarded sum from January 31, 2020 till the payment of the awarded sums.”

26. The learned arbitrator allowed the claims against each reference in a composite award. Had the learned arbitrator treated the five references to be separate and distinct, then paragraph 74 would have been separately mentioned in each copy of the signed awards. The specific claim that was allowed against each reference with the respective AP No, would have been mentioned in the concluding portion of each award. Each of the five copies which was signed by the learned arbitrator and delivered upon the parties, would have mentioned the specific AP No and the quantum awarded. The learned Arbitrator directed that the award will carry simple interest at the rate of 9% on the awarded sum, from January 31, 2020, till the payment of the awarded sum. Such direction indicates that, the learned arbitrator had awarded interest on the total consolidated claim that was awarded in the five references taken as a whole. Paragraph 76 of the award stated that the awarded amounts should be paid by the DVC to AKA within two months from the date of receipt of “the stamped signed copy of the award”. Paragraph 78 records that, the observations, directions and award concluded the arbitral references. Paragraphs 75 to 78 are quoted below.

“75. In the arbitral proceeding, it was decided by the parties that the venue and other incidental charges would be borne by the claimant at the first instance and 50% (fifty per centum) of such expenses to be reimbursed by the respondent. It was reported to me that a sum of

341,153/- (Rupees forty one thousand one hundred fifty three) only, which was payable by the respondent to the claimant, towards their share of venue charges, has not been paid. I, therefore, award the said sum of R41,153/- (Rupees forty one thousand one hundred fifty three) only, in favour of the claimant on account of unpaid venue charges payable by the respondent.

76. All the awarded amounts are to be paid by the respondent to the claimant within two months from the date of receipt of the stamped signed copy of the award

77. Each party shall bear its own costs.

78. The aforesaid observations, directions and award conclude the arbitral references, which are disposed of accordingly.”

27. Under such circumstances, the court does not hesitate to hold that the learned arbitrator and the parties understood the proceeding before the learned arbitrator arising out of five references, to be one composite proceeding and the learned arbitrator proceeded to pass a composite award. Thus, in the present case, though five distinct references were made, the learned arbitrator had chosen to dispose of all the references by passing one composite award at the suggestion of the parties. When a common award covers all the references, the challenge by way of a single petition is maintainable. The award is to be treated as one adjudication. In **ONGC VS. Saw Pipes Pvt, Ltd.**, reported in **AIR 2003 SC 2629**, the Hon’ble Apex Court observed that in an application for setting aside an award, the arbitral award was the subject matter of challenge in its entirety and not claim wise. Thus, although in paragraph 74 of the award, the claim against each reference was allowed, such distinction was made by the learned arbitrator only because the quantum/the monetary component varied. The intention was not to treat the proceeding as separate and distinct. At the

end of paragraph 74, interest was granted, on the total sum awarded, i.e., the quantum of money taken together. In ***State of Orissa Vs. Damodar Das***, reported in ***AIR 1996 SC 942***, it was held that when several disputes were decided by a single award, it nonetheless retained the character of a single award for the purpose of a proceeding for setting aside the award. Therefore, in my opinion, consolidated challenge is permissible and it will also avoid multiplicity of proceedings. However, the court fee must be calculated in accordance with the claim awarded against each reference. Although Mr. Ratnanko Banerji learned Senior Advocate, vehemently urged before the court that five references culminated in distinct findings and claims, and as such, separate petitions were required to be filed under Section 34, such objection is not accepted. The determining factor is not the number of references, but the form and the nature of the award made and published by the learned arbitrator and the procedure that was followed during the proceedings. The discussions hereinabove and the reference to the contents of the award, which have been partially set out hereinabove, clearly indicate that one single award was published, irrespective of whether the learned arbitrator ultimately sent five copies thereof, on five non-judicial stamp papers. Only the act of delivery of five copies of the self-same award by the learned arbitrator, in spite of publication of one composite award and correction of the award on the basis of a single application, by a single order, will not change the nature, form and character of the award from a composite one, to five separate and distinct awards, rendered in each of the five proceedings. The award read as a whole, would indicate that

it was one adjudication of the claims arising out of five references and all the claims with regard to the five references were disposed of as a whole. Thus, as multiple claims arising out of five references were disposed of by a common award, the maintainability of a single application for setting aside the same, is permissible. The court fees however, should be assessed claim wise, and if found to be deficit, should be paid by the petitioner (DVC, award debtor). To insist on multiple petitions will be a hypertechnical approach, which will defeat the object of speedy and efficacious adjudication under the Arbitration and Conciliation Act, 1996. The award is to be treated as one indivisible adjudication. In **Union of India Vs. C.C. Sharma**, the Delhi High Court also clarified that, in a case, where multiple claims or references were disposed of by a common award, the maintainability of a single application under Section 34 could not be doubted. Though, the court fees may be assessed claim-wise, the objective behind the promulgation of the Arbitration and Consolidation Act, 1996, was to ensure speedy, cost-effective, and efficient adjudication. Thus, the insistence on five different/separate applications, under Section 34 of the said Act, would only result in delay and multiplicity. In this case, the fact that the arbitrator circulated five copies of the same award, each bearing his original signature, does not alter the position that, the award was one single adjudication and all the claims and references were embodied in one award and decided together. By filing AP-COM 821 of 2024, the award debtor has challenged the award on both issues, that is, deduction of POL and non-refund

thereof, as also failure to reimburse 50% of the wages. These two broad issues were decided by the learned arbitrator in a composite manner.

28. The arbitral award cannot be equated with a decree of a civil suit. A decree is expressly appealable under Section 96 of the CPC. Each decree is a distinct adjudication of rights and liabilities in a suit. A decree should be drawn up in each suit. Even if multiple decrees are drawn up in respect of suits taken up and disposed of analogously, each decree must be challenged by a separate appeal. An arbitral award, on the other hand, is governed by the Arbitration and Conciliation Act 1996. Section 34 provides the procedure and grounds of challenge of an award and provides that recourse to a court against 'an' arbitral award may be made only by 'an' application for setting aside such award in accordance with subsection 2 and subsection 3.

29. The provision cannot be so interpreted to mean that, a composite award disposing of several claims would require separate applications to be filed challenging the award on each of the claims that were allowed.

30. The Arbitration and Conciliation Act, 1996, does not contemplate drawing up of a decree. Drawing up of a decree is a mandatory ministerial act of the civil court. No such provision has been incorporated in the said Act. The arbitral award is not a decree. It is a deemed decree by legal fiction, insofar as, its execution is concerned. Although decrees are separately appealable units, an arbitral award (composite) is one unit of adjudication.

31. Section 2(2) of the CPC defines a decree as follows:-

“2.(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights

of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.”

32. Section 33 of the CPC provides as follows:-

“33. Judgment and decree.—The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.”

33. Section 96 of the CPC provides as follows:-

“96. Appeal from original decree:-

1. Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.
2. An appeal may lie from an original decree passed ex parte.
3. No appeal shall lie from a decree passed by the Court with the consent of parties.
4. No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.”

34. Thus, the requirement of the CPC that, each decree being a final adjudication of the rights between the parties would be appealable separately, cannot be imported into a challenge of a composite award. Section 96 of the CPC provides the right of appeal from every decree passed by a court exercising original jurisdiction. Thus, if multiple decrees are drawn in one suit, each decree has to be appealed from separately, failing which, the un-appealed decree attains finality. CPC requires that once a judgment is pronounced, the court must draw up a decree. The decree is the formal operative instrument

that conclusively determines the rights of the parties to the suit. It is the decree and not the judgment which is appealable under Section 96 CPC, whereas it is the award which is under challenge under Section 34 of the said Act, as a whole.

35. Although the learned arbitrator awarded separate sums as per the claim in each reference, the fact that the claims were consolidated would appear from the manner in which the interest was awarded, that is at a simple rate of 9 % on the total sum awarded upon consolidation of the claims in five references.

36. Under such circumstances, this court holds that the applications are maintainable. Necessary court fees as may be assessed by the department, shall be deposited in both the applications, if found inadequate upon considering the claims in each of the five reference. The same shall be paid within 2 weeks from the assessment by the department. Department shall make the assessment within a week after reopening of the court after the puja vacation and the learned Registrar Original Side shall accept deposit of the amount. Let the applications be sent down to the department for assessment of the court fees. The petitioner shall deposit such deficit court fees if the amount deposited is found to be insufficient. There shall be unconditional stay of the award for a period of 10 (Ten) weeks. The petitioner will deposit Rs. 3,68,00,000/- (Rupees Three Crore and Sixty Eight Lakh Only) with the Registrar, Original Side, High Court at Calcutta by way of a demand draft within the afore-mentioned period. The demand draft shall be encashed and

deposited in an interest bearing auto renewable fixed deposit with any nationalised bank, until further orders.

37. Upon such deposit, the order of stay of enforcement of the award shall continue till disposal of the application under Section 34 of the Arbitration and Conciliation Act.

38. Although, the award debtor has prayed for unconditional stay, this Court does not find any reason to stay the award unconditionally, as the award is neither a product of fraud nor corruption. The averments made in the application under AP-COM 821 of 2024 indicate that the challenge to the award are on the merits.

39. When the Court considers a prayer for unconditional stay of the award, a cursory look at the award should indicate that either the making of the award was perpetuated by fraud or corruption, or that the award was in violation of any law or was based on forged documents, which were used in evidence or there had been violation of the principles of natural justice. Here, the case of the parties were considered, the relevant documents filed by the parties were taken into account, the deposition i.e. the examinations in chief and cross-examinations were also taken into account and the learned Arbitrator came to the conclusion, with reasons. Thus, at this stage, it cannot be said that the learned Arbitrator proceeded illegally and in a fraudulent manner, in making the award. It also does not appear that the learned Arbitrator had been either influenced or misled by the respondent. Unconditional stay of an arbitral award is a very narrow exception to the general rule that, when an award is for

a money decree, stay can only be granted when the 'sum' awarded (principal + interest) is secured. Before the amendment of 2015, mere filing of a petition under Section 34, would automatically stay its enforcement. After the amendment of 2015, which came into effect from October 23, 2015, filing of an application under Section 34 of the said Act, will not by itself operate as a stay of the award. The award debtor has to apply separately for a stay and the Court has the discretion to impose conditions for grant of stay. In case of an award for payment of money, the law mandates that the principles of Civil Procedure Code, shall be taken into consideration. Thus, the principles of Order 41 Rule 5 of the Code of Civil Procedure has been made applicable by law. Order 41 Rule 5 of the Code is quoted below :-

“5. Stay by Appellate Court.—*(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.*

(2) Stay by Court which passed the decree.—*Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.*

(3) *No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—*

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) *1 [Subject to the provision of sub-rule (3),] the Court may make an ex parte order for stay of execution pending the hearing of the application.*

[(5) *Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]”*

40. For unconditional stay, a special case has to be made out. Such provision was brought in by the amendment of 2021, which is the second proviso to Section 36(3). The petitioner failed to prove that the making of the award was induced by fraud and corruption. In ***NTPC Limited vs. Voith Hydro Joint Venture***, decided in ***OMP (COMM) 16/2017 & I.A No. 528/2017***, the Delhi High Court held that the threshold to establish, prima facie, fraud or corruption was very high. Mere allegations were insufficient and specific credible materials were to be shown. Unless the courts could, prima facie, find evidence of fraud and corruption or violation of any law, the question of unconditional stay did not arise.

41. Fraud would mean a deliberate deception in the arbitral process, which affected the award as a whole. It must be, prima facie, shown that the learned Arbitrator's decision was tainted on account of either suppression or deliberate concealment of material facts or misrepresentation. The Arbitrator must be misled into making an award, being influenced by false statements or misrepresentation. It must be shown that the decision was an outcome of collusion between the arbitrators and one of the parties, or that there was witness tampering. None of these instances could be, prima facie, established.

42. Meaning of the expression corruption in the making of the award would be that, the decision of the learned Arbitrator was influenced by illegal gratification or by abuse of power. There are no such allegations of corruption against the learned Arbitrator.

43. This Court does not find that the arbitral award was induced by fraud, upon considering the facts and the cited decisions. The award is not vitiated on account of deliberate act of deception by the respondent. The respondent has not secured any unfair and unlawful gain.

44. Under such circumstances, prayer (a) for unconditional stay of the award in AP-COM 166 of 2025 is denied and AP-COM 166 of 2025 is accordingly disposed of. AP-COM 821 of 2024 be detagged.

45. Affidavit-in-opposition to AP-COM 821 of 2024 within 2 weeks after the vacation, affidavit-in-reply within 2 weeks thereafter. Let the matter appear after exchange of affidavits.

46. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Shampa Sarkar, J.)