Ref no: BSE, NSE & CSE/OMDC/CS/12-2025/01
Dated: 11.12.2025

To	To	To
The Compliance Department Department of Corporate Services Bombay Stock Exchange Ltd 1st Floor, PhiozeJee, Jeebhoy Towers Bombay Samachar Marg Mumbai – 400001 **Scrip Code : 590086**	The Compliance Department National Stock Exchange of India Limited Exchange Plaza, Plot No. C/1, Block – G Bandra Kurla Complex Bandra (E) Mumbai - 400051 **Scrip Code : ORISSAMINE**	The Secretary The Calcutta Stock Exchange Limited 7, Lyons Range Kolkata- 700001 **Scrip Code : 25058**

SUB: ORDER DT. 09.12.2025, PASSED BY THE HON'BLE HIGH COURT AT CALCUTTA IN F.M.A. NO. 939 of 2012 WITH F.M.A. NO. 941 of 2012 (THE ORISSA MINERALS DEVELOPMENT COMPANY LIMITED VS. JAI BALAJI INDUSTRIES LIMITED)

Dear Sir/Madam,

This is to bring to your kind attention that vide order dated 09.12.2025 (received yesterday), the Bench of Hon'ble Justice Mr. Sabyasachi Bhattacharyya and Hon'ble Justice Mr. Supratim Bhattacharya of Calcutta High Court dismissed both the appeals field by OMDC on contest, thereby affirming the Judgment and Order dated February 29, 2012, passed by the learned Additional District Judge, Fourth Court at Barasat, District: North 24-Parganas in Miscellaneous Case No. 173 of 2010 and the Judgment and Order dated February 27, 2012, passed by the learned Additional District Judge, Fifth Court at Barasat, District: North 24-Parganas in Miscellaneous Case No. 159 of 2010 respectively, as well as affirming the awards passed in both matters by the Arbitral Tribunal.

This is for your kind information & record.

Thanking You

For, ***The Orissa Minerals Development Company Limited***

PINTU KUMAR BISWAL
Digitally signed by PINTU KUMAR BISWAL
Date: 2025.12.11 12:59:58 +05'30'

(Pintu Ku. Biswal)
Company Secretary

Enclo: Copy of the order dated 09.12.2025, passed by the Calcutta High Court.

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

F.M.A. No. 939 of 2012
With
F.M.A. No. 941 of 2012

The Orissa Minerals Development Company Limited
Vs.
Jai Balaji Industries Limited

For the appellant	:	Mr. Suman Kumar Dutt, Sr. Adv., Mr. Kamal Kumar Chattopadhyay, Mr. Debdeep Sinha, Ms. Rini Chatterjee
For the respondent	:	Mr. Jishnu Saha, Sr. Adv., Mr. Sourojit Dasgupta, Mr. Shaunak Mukhopadhyay, Mr. Tanay Agarwal, Ms. Darshana Sett, Ms. Priyansha Agarwal
Heard on	:	13.11.2025 & 01.12.2025
Reserved on	:	01.12.2025
Judgment on	:	09.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") arise out of judgments passed under Section 34 of the 1996 Act, affirming

the awards passed in two arbitration proceedings between the same parties, which emanated from two substantially similar agreements entered into between the parties.

2. In case of F.M.A. No. 939 of 2012, an agreement was entered into on March 11, 2004, whereby the respondent/appellant, the Orissa Minerals Development Company Limited ("Orissa Minerals", for short) agreed to supply to the respondent Jai Balaji sponge grade calibrated iron ore of 65% (Fe 05-18mm) to the tune of 7,000 Metric Tonnes per month for the period between April 1, 2004 and March 31, 2005, renewable subject to mutual acceptance of the parties as regards the terms and conditions.

3. In F.M.A. No. 941 of 2012, an agreement was entered into on August 13, 2003 for a period of one year from October 1, 2003 to September 30, 2004, whereby the respondent/appellant was to provide to the claimant/respondent iron ore of 63% (Fe 10-30mm) to the tune of 1,00,000 tonnes (± 25%) per annum.

4. Subsequently, the claimant/respondent raised disputes as to the quality of the products supplied. The respondent/appellant stopped supply on the ground of non-payment of the full amounts due for such iron ore after June, 2004 in both the cases.

5. This led to the claimant/respondent referring both the matters to arbitration, leading to the impugned awards being passed. The Arbitral Tribunal passed awards under the heads of excess amount spent in purchasing 43,413.70 MT of iron ore from other suppliers due to

stoppage in supply by the appellant Orissa Minerals and on account of loss of profits. Simple interest was awarded in each of the cases from October 1, 2004 till realisation on the amount of excess amount spent in F.M.A. No. 941 of 2012 and from January 1, 2005 at the same rate, also for the excess amount spent in purchasing the balance iron ore in F.M.A. No. 939 of 2012. In both the awards, simple interest was also granted (@ 6% per annum in F.M.A. No. 941 of 2012 and @ 10% per annum in F.M.A. No. 939 of 2012) on the principal amounts of loss of profits, from the date of award till realisation.

6. Challenging the same, applications under Section 34 of the 1996 Act were preferred, which were dismissed, thereby affirming both the awards, leading to the present appeals under Section 37 of the said Act being filed.

7. Learned senior counsel appearing for the appellant argues that the Arbitral Tribunal erroneously arrived at the finding that there was a breach of contract on the part of the appellant, by overlooking the mandatory provisions in both the Agreements that the goods (iron ore) would only be supplied on 100% advance payment being made and a prior demand being made by the claimant/respondent, as well as that the claimant/respondent was to participate in the tender to be floated by the appellant to ensure supply of entire agreed quantity of iron ore. Also, it is contended that both the agreements envisaged that supply of the quantities enumerated therein would be made subject to availability of the iron ore.

8. In view of the Arbitral Tribunal having overlooked such pre-requisites, which were not met by the claimant/respondent, the impugned awards are perverse.

9. Secondly, learned senior counsel for the appellant argues that the Arbitral Tribunal sought to re-write the contract between the parties by holding that the agreed amounts of iron ore were contractually mandated to be supplied by the appellant without fail and without any advance payment or prior demand, which is contrary to the agreements between the parties. Thus, the view taken by the Tribunal was not even a possible view.

10. The award impugned in F.M.A. No. 941 of 2012, it is argued, is a replica of that passed in F.M.A. No. 939 of 2012, although the contracts between the parties were different, which also vitiates the awards.

11. Thirdly, it is argued by the appellant that the Arbitral Tribunal came to a conclusion that the aforementioned mandatory pre-requisites were waived by the appellant, by overlooking the fact that the agreements between the parties were comprised of reciprocal promises which were to be mutually performed by the parties for the contract to take effect. Since no advance payments were made, nor any prior demand was made, by the claimant/respondent and the respondent also failed to participate in the tender floated by the appellant, there arose no question of waiver.

12. Learned senior counsel cites *Sikkim Subba Associates v. State of Sikkim*, reported at *(2001) 5 SCC 629*, to argue that one who seeks

equity must also do equity and when the condonation or acceptance of belated performance is conditional upon future good conduct and adherence to the promises of the defaulter, the so-called waiver cannot be considered to be forever and complete in itself so as to deprive the appellant.

13. Learned senior counsel next relies on *Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh and others*, reported at *(1979) 2 SCC 409*, in support of the proposition that waiver is a question of fact which is required to be pleaded. The respondent, Jai Balaji Industries Limited ("Jaia Balaji", for short) having never pleaded the case of waiver in its Statements of Claim, nor any plea to that effect was raised before the Arbitral Tribunal, it is argued that the Tribunal proceeded in a perverse manner to read such waiver into the conduct of the appellant.

14. Learned senior counsel for the appellant next argues that the Arbitral Tribunal passed awards on account of purported excess amounts spent in purchasing 47,413.70 MT iron ore on the premise of breach of contract, despite there being no breach on the part of the appellant, since supply was stopped due to non-payment of advance amounts as per the contract, also by overlooking the fact that supply was subject to availability. Thus, it is contended that the awards are opposed to public policy as those allowed a remote claim which does not naturally arise in the usual course of the contracts.

15. The awards on account of loss of profits in both the cases, it is submitted, is based purely on hypothetical and unrealistic calculations not borne out by evidence. The said awards were made without any basis of calculation and without evidence or supporting documentation but purely on guess work. It is argued that to support a claim for loss of profit arising from a delayed contract or missed opportunities from available contracts that the claimant/respondent could have earned elsewhere, it was imperative for the claimant/respondent to substantiate the availability of viable opportunities through compelling evidence, which the claimant/respondent failed to prove in the present case.

16. In support of such contention, learned senior counsel cites *Unibros v. All India Radio*, reported at *2023 SCC OnLine SC 1366*.

17. It is further argued that loss of profit had to be proved upon proving depletion of business turnover and on the basis of actual loss, which was never proved in the present cases. For such proposition, learned senior counsel cites *Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited and another*, reported at *(2024) 2 SCC 375*.

18. The appellant argues that since there was no premise for the earlier components of the awards, the interest awarded thereon was without any justification and beyond the contract between the parties. Similarly, in the absence of any proof of breach of contract, the Arbitral Tribunal traversed beyond the contract in awarding costs.

19. Lastly, it is argued that the impugned awards fail to satisfy the tests laid down under Section 34 of the 1996 Act and/or are devoid of reasoning. The awards, it is argued, are based on no material evidence, which no fair-minded or reasonable person could arrive at.

20. Moreover, the learned Judge taking up the challenges under Section 34 of the 1996 Act failed to consider that the Arbitral Tribunal had wandered outside the contract and dealt with matters not submitted to it, which was a palpable error of jurisdiction.

21. Learned senior counsel appearing for the respondent reiterates the contentions of the respondent before the Arbitral Tribunal and submits that the Arbitral Tribunal noted all facets of the agreements between the parties, including that in spite of payment of substantial sums of money by the respondent, the appellant failed to supply goods of the said value to the respondent, thus, committing breach of the agreements. It is pointed out that the Arbitral Tribunal dealt with all the objections raised by the appellant before this Court, including the alleged failure on the part of the respondent to demand the goods, coming to the conclusion that there was no such pre-condition contemplated in the contracts.

22. The Arbitral Tribunal, it is contended, formulated the questions as to whether the contracts contained any provision for advance demand and came to a negative conclusion in that regard. The question of delay in making final payments was also considered by the Arbitral Tribunal

and it noted that the respondent has made written complaints with regard to inferior quality of goods, which justified the delay.

23. The Tribunal further recorded, it is submitted, that in support of its claim on account of difference in the price of goods procured from the market, the respondent's witness had given evidence. Documents, including purchase orders, were also relied on by the Tribunal. Thus, in view of the Arbitral Tribunal having adequately dealt with all the contentions raised by the appellant and having come to a reasoned conclusion, it cannot be said that the awards impugned herein suffer from any perversity.

24. No ground of interference under Section 34 of the 1996 Act was made out, it is submitted; rather, the appellant's attempt has been to question the Tribunal's interpretation of the contract for the first time in its arguments in appeal under Section 37 of the 1996 Act, which it is precluded from doing in law. Thus, it is submitted that the appeals ought to be dismissed.

25. Upon hearing learned senior counsel for the parties, it transpires that the following issues fall for consideration in the matter:

(i) Whether the contracts envisage pre-conditions of participation in the tender, availability, and making any prior demand for goods;

(ii) Whether there was any waiver on the part of the appellant in respect of the pre-condition of 100% advance payment;

(iii) Whether the total contracted amounts were to be mandatorily supplied by the appellant;

(iv) Whether the tender of undated cheques by the respondent amounted to sufficient compliance of the agreements;

(v) Whether the Arbitral Tribunal committed a perversity in passing similar awards in both the matters;

(vi) Whether by virtue of stoppage of supply of the goods, the appellant committed a breach of the contracts;

(vii) Whether the respondent was entitled to the awards on account of excess amounts spent in purchasing balance iron ore;

(viii) Whether the respondent was entitled to the awards for loss of profits;

(ix) Whether the respondent was entitled to the awards for interests and costs; and

(x) Whether the parameters of Section 34 of the 1996 Act were satisfied.

26. The said issues are decided as follows:

(i) Whether the contracts envisage pre-conditions of participation in the tender, availability, and making any prior demand for goods

27. The appellant has argued that the Agreements contemplate prior demands for the goods being made by the respondent. However, despite thorough scrutiny, we do not find within the four corners of either of the Agreements any such provision mandating prior demands to be made by the respondent for the agreed quantum of iron ore to be

supplied by the appellant. In the Agreement dated March 11, 2004, which is the subject-matter of dispute in F.M.A. No. 939 of 2012, the appellant agreed to supply iron ore of the specifications as enumerated therein to the tune of 7,000 MT per month. Although the expression "subject to availability" is used in Clause 4 of the said Agreement, Clause 5(f) uses the expression "shall provide" to qualify the supply of such amount during the tenure of the contract. Similarly, in the contract dated August 13, 2003, which is the subject-matter of dispute in F.M.A. No. 941 of 2012, Clause 4 includes the expression "subject to availability" which is qualified by Clause 5(g) which, in mandatory language, provides that the appellant "shall provide" iron ore of the agreed quantity during the tenure of the contract.

28. Thus, a conjoint reading of the said provisions allow for a possible interpretation that the appellant had mandatorily to supply such quantities of iron ore respectively under both the agreements, irrespective of prior demands being made by the claimant/respondent and/or availability of the iron ore. Moreover, the appellant had not brought any material before the Arbitral Tribunal to establish that such quantities were not available at any point of time with the appellant. Hence, the conditions of prior demand and availability might not have been construed as a mandatory provision legitimately by the Arbitral Tribunal.

29. Insofar as participation in the tender process is concerned, in the Agreement dated March 11, 2004, it is provided that the respondent

shall participate in any tender floated by the appellant; on failure of the respondent to so participate and/or being able to be the highest bidder in the tender, the Agreement contemplates that the appellant would still go on supplying the agreed quantities of iron ore, subject to the respondent agreeing to match the price and other terms and conditions of the highest bidder in the tender.

30. Similarly, in the Agreement dated August 13, 2003, it is stipulated that in case the appellant prefers to determine the price and other terms and conditions through tender, the respondent "should participate in the tender". However, immediately thereafter, it is mentioned that on acceptance of applicable terms of supply by the respondent, so decided through tender, the latter shall be allowed to lift the materials.

31. Thus, non-participation in the tender process was not fatal to either of the Agreements. The respondent was required only to agree to match the price and terms and conditions fixed through tender or as per the highest bid. The appellant has failed to make out any case of refusal on the part of the respondent to do so. As such, none of the above conditions could be treated to be mandatory pre-conditions prompting the appellant to stop supply.

(ii) Whether there was any waiver on the part of the appellant in respect of the pre-condition of 100% advance payment

32. It is argued by the appellant that no case of waiver was made out in the Statements of Claim by the respondent in either of the matters.

However, in the Statements of Claim, the respondent categorically pleaded about the supply being made, for nine months in F.M.A. No. 941 of 2012, out of the contract period of one year, and for three consecutive months from April to June, 2004 in F.M.A. No. 939 of 2012, in the context of the contract envisaging monthly supply of the agreed amount.

33. Moreover, the issue of waiver came up before the Arbitral Tribunal and was addressed by both the parties in their arguments at length, by citing judgments as well. Hence, it cannot be said that at least the rudiments of the facts constituting waiver were not in the pleadings and/or the appellant was taken by surprise on such issue and/or that the issue was not dealt with by the Tribunal. Hence, the said argument of the appellant ought to be nipped at the threshold.

34. Undoubtedly, to constitute waiver, there has to be the conscious relinquishment of a known right. The right of getting 100% advance payment was known to the appellant, since provided in the contract itself, all along. The relinquishment of such right comprised in continuing supply without insisting upon advance payment for a considerable period of time.

35. Whereas in respect of the Agreement dated August 13, 2003, the supply was to be made per annum, out of the contractual period of one year, supply was made for as long as nine months, that is three-fourths of the contractual period. In respect of the Agreement dated March 11, 2004, on the other hand, the contemplation was monthly supply, which

was done consecutively for three different months, without insisting upon advance payment. In the Statements of Claim, the respondent pleaded that the usual practice was for the respondent to give undated cheques to the appellant and the supply to be made. Evidence was also led on such score. Hence, there was sufficient material before the Arbitral Tribunal to arrive at the conclusion that there was conscious relinquishment of the known right to claim 100% advance payment by the appellant. Such conclusion is not only one of the 'possible' views but also a 'plausible' conclusion in the facts of both cases. Hence, there cannot be any interference under Section 34 of the 1996 Act, taking into consideration the judgments of *ONGC Ltd. v. Saw Pipes Ltd.*, reported at *(2003) 5 SCC 705* and *Associate Builders v. DDA*, reported at *(2015) 3 SCC 49*, both cited by the appellant.

(iii) Whether the total contracted amounts were to be mandatorily supplied by the appellant

36. The question of the total amount being mandatorily supplied can be answered with reference to Clauses 4 of both the Agreements, read with Clause 5(g) in F.M.A. No. 941 of 2012 and Clause 5(f) in F.M.A. No. 939 of 2012. Whereas Clause 4 in both the Agreements uses the expression "subject to availability", such term was omitted in the latter Clauses, by introduction of the expression "shall provide during tenure of the contract".

37. Thus, one of the plausible and possible views which could be taken on the materials on record and an interpretation of the contract itself, on a conjoint reading of the relevant clauses, was that it was mandatory for the appellant to supply the agreed quantity, irrespective of availability. Also, as discussed earlier, the appellant failed to make out any case of non-availability of the agreed quantities at any point of time during the subsistence of the contracts. Thus, this issue is also decided against the appellant.

(iv) Whether the tender of undated cheques by the respondent amounted to sufficient compliance of the agreements

38. Insofar as the undated cheques are concerned, the respondent pleaded in the Statements of Claim and proved by evidence that tendering of undated cheques was the usual mode in practice between the parties. That apart, the Arbitral Tribunal took into consideration the written complaints raised contemporaneously by the respondent regarding the quality of the iron ore supplied, construing the same as sufficient justification for withholding the payment for a period, since there was correspondence on record between the parties to substantiate such dispute.

39. Moreover, the appellant failed to show that any claim of payment of dues, advance or otherwise, was made during the relevant period by the appellant Orissa Minerals; rather, supply was continued for a substantial period despite non-payment. Upon such claim being made

for the due amounts, however, the respondent tendered cheques to meet the dues. Thus, at no point of time was the respondent Jai Balaji in default of payment to justify stoppage of supply of goods by the appellant.

40. Rather, the subsequent tender of cheques by the respondent with the reasonable request of presentation of those after despatch of the rakes and intimating the respondent to enable the latter to arrange for clearing of the same could not be held *per se* to invalidate such payments. Since the undated cheques of specific amounts were paid in advance and a request was only made for intimation and not for non-presentation of the cheques, it was sufficient and substantial compliance of the agreements.

41. The appellant's argument that the payments did not cover 100 % of the advance payments is also misconceived, in view of the iron ore being lifted by the respondent in tranches and not at one go, and more than 100% of the first few tranches being covered by the payment.

(v) Whether the Arbitral Tribunal committed a perversity in passing similar awards in both the awards

42. Since the issues involved in both the proceedings were substantially the same, we do not find any fault in the Arbitral Tribunal passing similar awards in both. It is to be noted that the specific and unique facts and figures of each case were dealt with independently in the respective awards by the Tribunal. Thus, it cannot be said that one award is the

"replica" of the other. Hence, such objection of the appellant cannot but be turned down.

(vi) Whether by virtue of stoppage of supply of the goods, the appellant committed a breach of the contracts

43. We do not find within the four corners of either of the Agreements any provision empowering the appellant Orissa Minerals to stop supply due to non-payment. Both the Agreements contain provisions for termination of the contract upon the respondent Jai Balaji disagreeing to match the price and terms and conditions if tender was floated by the appellant. However, no case of refusal on the part of the respondent to do so has been made out.

44. Moreover, since disputes as to quality of the material supplied were raised by the respondent in writing and those were pending unresolved at the relevant juncture, the Arbitral Tribunal was justified in coming to one of the possible conclusions in holding that the said dispute mitigated the non-payment of the respondent. It is also to be taken note of that immediately upon the claims being made, such payments were cleared off by the respondent. Admittedly, there were discussions and meetings between the parties and an understanding arrived at on such count.

45. That apart, the appellant continued to supply the iron ore for a substantial period despite no advance payment being made, as per the appellant itself.

46. Taken in proper perspective, in the light of the above factors, the appellant was definitely in breach of the Agreements in stopping supply on the ground of non-payment of the price.

47. The appellant cites *Sikkim Subba Associates (supra)*[1] to argue that one who seeks equity must do equity. However, the claim before the Arbitral Tribunal was not equity-based but contractual. Thus, such principle has no direct applicability in the present context.

(vii) Whether the respondent was entitled to the awards on account of excess amounts spent in purchasing balance iron ore

48. In respect of purchase of the balance iron ore from third parties, the Arbitral Tribunal, in each of the awards, took into consideration meticulously the quantum of balance iron ore which was not supplied by the appellant and the differences in price were painstakingly calculated on the basis of the agreed prices. It is only on the difference of price on which the award on account of excess amounts spent by the respondent for purchasing the balance iron ore was granted.

49. Hence, the Arbitral Tribunal was justified in passing the said component of the award.

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1. ***Sikkim Subba Associates v. State of Sikkim, reported at (2001) 5 SCC 629***

(viii) Whether the respondent was entitled to the awards for loss of profits

50. In respect of loss of profits, the appellant argues non-compliance of Section 73 of the Contract Act. However, the Arbitral Tribunal categorically took into account mitigation by purchase of the balance product from other suppliers by the respondent and only awarded loss of profits on the remaining quantum of iron ore.

51. To calculate loss of profits, several purchase orders were produced in evidence by the respondent, which was made the basis of such calculation by the Arbitral Tribunal. Thus, the argument, that loss of profit was calculated without any basis, is completely misconstrued.

52. It is well-settled that reasonable amount of "guesstimate" can be resorted to in such cases, since claims in the nature of damages/loss of profits cannot be calculated with exactitude.

53. As held in *Batliboi Environmental Engineers Limited (supra)*[2], no windfall can be permitted to be gained by a party by way of loss of profits/damages.

54. In *Unibros (supra)*[3], the mitigation factor, it was held, had to be considered.

55. In the present case, the evidence at Pages 99 – IQ4 was considered specifically by the Arbitral Tribunal, by way of purchase orders, which

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2. ***Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited and another*, reported at *(2024) 2 SCC 375***

3. ***Unibros v. All India Radio*, reported at *2023 SCC OnLine SC 1366***

formed the basis of probable profits and, thus, calculation of loss of profits for the balance quantity of goods. As such, the said component of the award was based on sufficient material evidence and cannot be said to be perverse. Hence, the Arbitral Tribunal was justified in passing the said portion of the award.

(ix) Whether the respondent was entitled to the awards for interest and costs

56. Insofar as interest is concerned, the Arbitral Tribunal acted within jurisdiction in granting interest, which it was empowered to impose under Section 31(7) of the 1996 Act. Also, in view of the Arbitral Tribunal having held that the appellant was in breach of the agreements, costs were rightly awarded by the Arbitral Tribunal, also well within its jurisdiction. Hence, there was neither any jurisdictional error nor perversity in imposing interest and costs in the award.

(x) Whether the parameters of Section 34 of the 1996 Act were satisfied

57. In view of the above discussions, it is palpably clear that none of the criteria for judicial interference, as stipulated in Section 34 of the 1996 Act, are attracted in the present case.

58. The arguments of the appellant are primarily based on Section 34(2)(a)(iv) of the 1996 Act. However, we do not find any ingredient of

the Arbitral Award dealing with any dispute not contemplated by or falling within the terms of submission to the Tribunal.

59. Since admittedly, the Arbitral Awards were passed and the judgments under Section 34 of the 1996 Act were also delivered prior to the coming into force of the 2015 Amendment to the 1996 Act, the ground under sub-section (2-A) of Section 34 with regard to patent illegality does not arise at all.

60. In order to meet the high tests of interference under Section 34 of the 1996 Act, the appellant was required to show that the impugned Arbitral Awards were erroneous to such an extent that the court's conscience would be shocked and/or such awards are in conflict with the public policy of India.

61. However, from the facts of the case as discussed above, we do not find such tests having been met. Hence, the impugned judgments passed under Section 34 of the 1996 Act as well as the Arbitral Awards impugned thereby affirmed are not liable to be interfered with within the parameters of Section 34.

62. It is well-settled that in appeals under Section 37 of the 1996 Act arising out of orders passed under Section 34 of the 1996 Act, the appellate court derives authority coloured by the texture of Section 34 and its parameters. Hence, the tests under Section 34 having not been met, the Section 34 Court rightly affirmed the impugned Arbitral Awards.

CONCLUSION

63. Based on the above discussions, both the appeals fail.

64. Accordingly, F.M.A. No. 939 of 2012 and F.M.A. No. 941 of 2012 are dismissed on contest, thereby affirming the Judgment and Order dated February 29, 2012, passed by the learned Additional District Judge, Fourth Court at Barasat, District: North 24-Parganas in Miscellaneous Case No. 173 of 2010 and the Judgment and Order dated February 27, 2012, passed by the learned Additional District Judge, Fifth Court at Barasat, District: North 24-Parganas in Miscellaneous Case No. 159 of 2010 respectively, as well as affirming the awards passed in both matters by the Arbitral Tribunal.

65. There will be no order as to costs.

66. Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)