

(2025) 03 JH CK 1383
In the Jharkhand High Court
Case No : C.M.P. No. 1031 Of 2024

Oil and Natural Gas Corporation Limited	APPELLANT
Vs	
M.s H.N. Roy	RESPONDENT

Date of Decision : 24-03-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Arbitration and Conciliation Act, 1996 — Section 34, 34(2), 34(2)(a), 34(2)(b)

Citation : (2025) 03 JH CK 1383

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rahul Lamba, Vibhor Mayank, Shivam Kumar

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the sole opposite party.

2. This petition has been filed under Article 227 of the Constitution of India for setting aside of the order dated 12.09.2024 passed by learned Commercial Court/ District Judge – 1st Bokaro in Arbitration Case No.08/2022 whereby the application dated 01.06.2024 filed by the petitioner in the said proceeding was rejected by the learned Court. Further prayer is made for direction to call for the records of the relevant arbitration proceeding before adjudicating the Arbitration Case No.08 of 2022, which is a case filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the Arbitral Award dated 17.07.2022.

3. Learned counsel appearing for the petitioner submits that the petitioner is a company registered under the Companies Act, 2013 and is inter alia engaged in business of development and production of Coal Bed Methane Gas (hereinafter referred as "CBM Gas") in and around district of Bokaro. He submits that the

petitioner had issued a tender on 11.08.2017 for sale of CBM Gas for three blocks and the said tender for Bokaro block was allotted to the sole opposite party. The sole opposite party and the petitioner on 16.04.2018 entered into an agreement for sale of CBM Gas. He further submits that the opposite party on 25.04.2018 applied to Petroleum and Natural Gas Regulatory Board ("PNGRB") the government regulatory authority, for taking the No Objection Certificate (NOC) for selling the CBM Gas. Subsequently, the opposite party had also applied to Petroleum and Explosives Organization (PESO) another government authority for carrying out its business of selling the CBM Gas. The petitioner has accepted the readiness of supply of the said gas by letter dated 05.07.2019 and PESO gave its final approval/NOC to the opposite party on 04.10.2019 and following the other procedure the agreement has been signed on 16.04.2018. He submits that the dispute arose in view of the fact that the petitioner made several requests to the opposite party for taking the supply of gas from the petitioner but the opposite party did not restart taking the supply of gas from the petitioner after 18.03.2020 and by notice dated 27.12.2020 invoked the arbitration clause of the said agreement for adjudication of the dispute by the learned Arbitral Tribunal comprising of three arbitrators and pursuant to that the retired two Judges of this Court Justice R.K. Merathia (Retd.) and Justice D.K. Sinha (Retd.) along with Mr. Rahul Gupta, Advocate have been appointed in Arbitral Tribunal. After hearing the parties, learned Arbitral Tribunal has awarded the award in favour of the sole opposite party. He submits that in view of that Section 34 of the Arbitration and Conciliation Act, 1996 was invoked and the proper petition was filed before the learned Commercial Court, Bokaro which was registered as Arbitration Case No.08 of 2022 in which a petition was filed on 01.06.2024 for calling of the Arbitral record which has been rejected by the learned Tribunal by order dated 12.09.2024 only on the ground that since arbitral award is on record, there is no need to call for record of arbitration proceeding. He draws the attention of the Court to Section 34 of the Arbitration and Conciliation Act, 1996 and submits that section is very much clear that the case has to be established on the basis of record of the Arbitral Tribunal and in view of that the learned Court has wrongly passed the said order. On this ground, he submits that the said order may kindly be set aside.

4. Learned counsel appearing for the sole opposite party opposes the prayer and submits that there is no illegality in the order. The learned Court has rightly passed the order as the award was already on the record. He submits that the award was there to deposit the awarded amount to GS Alternate Energy LLP which is sister concerned of the sole opposite party. On this ground, he submits that this petition may kindly be dismissed.

5. What has been recorded here-in-above in the submission of learned counsel appearing for the parties, it is crystal clear that an agreement is there between the parties which was carrying an arbitration clause and in view of the dispute the said clause have been invoked and pursuant to that Arbitral Tribunal has been constituted forming of three persons as has been disclosed here-in-above

and learned Arbitral Tribunal has passed the Award dated 17.07.2022 and pursuant to that Section 34 was invoked by the petitioner herein and notices have been issued pursuant to that the sole opposite party has also filed a petition dated 01.06.2024 for calling of the arbitration proceeding record which has been rejected by the learned Court. Sub-section 2 of Section 34 of Arbitration and Conciliation Act, 1996 stipulates as under :-

Section 34(2) in The Arbitration and Conciliation Act, 1996

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that:]

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India

For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

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

24. The ratio of the aforesaid three decisions on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2)(b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed unless absolutely necessary.

7. In view of the above judgment of Hon'ble Supreme Court and further reading Sub-section 2 of Section 34 of Arbitration and Conciliation Act, 1996, it is crystal clear for deciding the dispute under Section 34 the record is necessary and the statute is very much clear. In view of that the impugned order is not in accordance with law. As such the impugned order dated 12.09.2024 is hereby set aside.

8. The application dated 01.06.2024 is restored to the file of the learned Court to pass fresh order in light of above discussion here-in-above.
9. Pending petition, if any, is also disposed of.