

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]
ORIGINAL SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

**AP-COM/88/2024
IA No. GA No. 1 of 2025**

WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LTD.

VS.

TATA MOTORS LIMITED

For the award-holder:

**Mr. Sudipto Sarkar, Sr. Advocate
Mr. Siddhartha Mitra, Sr. Advocate
Mr. Deepan Kr. Sarkar, Advocate
Mr. Samridha Sen, Advocate
Mr. Soumitra Datta, Advocate**

For the award-debtor:

**Mr. Kishore Datta, Advocate General
Mr. T.N. Siddique, Advocate
Mr. Manoj Kumar Tiwari, Advocate
Mr. Deepank Anand, Advocate
Ms. Arpita Dey, Advocate**

Reserved on:

24.04.2025

Judgment on:

19.06.2025

ANIRUDDHA ROY, J.:

Facts:

1. This **GA No. 1 of 2025** is an application taken out by the award-debtor (WBIDC) as an interlocutory application in a proceeding filed by it under **Sub-Section 2 to Section 36** of the **Arbitration and Conciliation Act, 1996**. In the application filed by the award-debtor under **Sub-Section 2 to**

Section 36 of the Arbitration Act, an unconditional stay of operation of the award dated **November 30, 2023** passed by the Arbitral Tribunal and the consequential interim order have been prayed for.

2. From time to time the said application filed by the award-debtor under **Sub-Section 2 to Section 36** of the Arbitration Act has been substantially heard. The award-debtor has concluded his submissions. Opposing the submissions of the award-debtor, the award-holder has also concluded its submissions. On **April 3, 2025** when the day was fixed for commencing submissions by the award-debtor in reply to the submissions of the award-holder, the instant application GA No. 1 of 2025 has been moved, at the fag end of hearing of the main application filed by the award-debtor under **Sub-Section 2 to Section 36** of the Arbitration Act.
3. The grounds on which the instant application has been filed and the case made out therein would appear from the averments made in the application. The relevant averments are quoted below:

“3. It is respectfully submitted that the Section 36 Application is currently being heard by this Hon’ble Court, and the next hearing is scheduled on 3 April 2025 for rejoinder arguments by the Petitioner.

4. As set out in detail in the Section 36 Application, there existed (and continue to exist) circumstances which give rise to justifiable doubts as to the independence and impartiality of the Learned Presiding Arbitrator. For reasons unknown to the Petitioner, the Learned Presiding Arbitrator chose not to and/or did not disclose his association/relationship/engagements with TML, which continued during the currency of the arbitral proceedings. The Petitioner has filed various documents on record evidencing the relationship

between the Learned Presiding Arbitrator and TML, and has raised specific allegations of bias against the Learned Presiding Arbitrator.

5. The fact that the Learned Presiding Arbitrator did attend the events on several occasions, as appearing from the above documents, is not in dispute. It is also not in dispute that the Learned Presiding Arbitrator did not make any disclosure regarding these repeated engagements with TML. Respondent however asserts that bias is not a ground for grant of an unconditional stay on the operation of an arbitral award, and that this Hon'ble Court should not go into the question of bias at all since the Learned Presiding Arbitrator has not been made a party to the present proceedings. Be that as it may, it is the case of the Petition that owing to the unexpected conduct of the Learned Presiding Arbitrator, coupled with the denial of equal treatment and opportunity in the arbitration, the Award is in conflict with the public policy of India and the making of the Award is affected by fraud and/or corruption. It is respectfully submitted that the operation of the Award is therefore liable to be unconditionally stayed.

*6. In support of the above submissions, during arguments, the Application/Petitioner had relied upon various judicial precedents. Amongst others, the Petitioner had placed reliance on the decision of the Hon'ble Supreme Court in **Vinod Bhaiyalal Jain vs. Wadhwani Parmeshwari Cold Storage**, reported as **(2020) 15 SCC 726**, and the decision of the Hon'ble Delhi High Court in **Microsoft Corporation vs. Zoai Founder**, reported as **2023 SCC OnLine Del 3800**. In both these cases, there was an allegation of bias against the arbitrator.*

7. In the hearing held on 7 January 2025, it was contended by the Respondent that:

*-in both the decisions cited by the Petitioner, viz., **Vinod Bhaiyalal Jain vs. Wadhwani Parmeshwari Cold Storage**, reported as **(2020) 15 SCC 726**, and **Microsoft Corporation vs. Zoai Founder**, reported as **2023 SCC OnLine Del 3800**,*

the arbitrator in question was made a party to the proceeding;

-the issue of bias cannot be decided in the absence of the Learned Presiding Arbitrator;

-since the Learned Presiding Arbitrator has not been made a party to the present proceeding, this Hon'ble Court should not go into the question of bias at all;

-the Learned Presiding Arbitrator has to be heard and failure to do so will result in gross injustice.

8. In support of the above submissions, the Respondent placed reliance on a judgment of the Hon'ble Madras High Court in Kothari Industrial Corporation Limited v. Southern Petrochemicals Industries Corporation Limited, reported as (2021) SCC OnLine Mad 5325. The relevant portion of the above judgment is extracted herein below:

"2. For a start, the name of the second respondent is deleted from the array of parties. It is a pernicious practice in this court to implead arbitrators or arbitral tribunals when there is no need to do so. Often, arbitrators are embarrassed upon receipt of notice. It is only in a rare case when a personal allegation is made against an arbitrator may such arbitrator be impleaded. Just as in case of a revision or an appeal the lower forum or the Judge manning the lower forum is not impleaded as a party, in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the arbitrator or the members of the arbitral tribunal are utterly unnecessary parties unless specific personal allegations are levelled against them that would require such persons to answer the allegations."

9. It is respectfully submitted that when the Petitioner had filed the Section 36 Application, it was fully conscious of the legal position summarized in the above decision of the Hon'ble Madras High Court. However, given the seriousness of the issue and the sensitivity involved, the Petitioner exercised utmost restraint and

caution- and did not implead the Learned Presiding Arbitrator. In view of the submissions made by the Respondent, the Petitioner agrees with the Respondent and submits that the Learned Presiding Arbitrator should be requested to clarify his association with the Respondent as reflected from the documents annexed at Pages 222 to 260 of the Section 36 Application, and for such purpose, the Learned Presiding Arbitrator may be impleaded in the array of respondents in the Section 34 Application as well as the Section 36 Application.

10. The Petitioner respectfully submits and concurs with the Respondent that any order passed in the present proceedings will have a direct bearing on the Learned Presiding Arbitrator. It is therefore submitted that the Learned Presiding Arbitrator's presence is necessary to enable this Hon'ble Court to effectually and completely adjudicate upon the questions raised in the present proceedings. It is also relevant to mention herein that to demonstrate the relationship between the Learned Presiding Arbitrator and the Respondent, the Petitioner had also placed on record a news item appearing on the website of the Respondent and in this regard, had filed a supplementary affidavit dated 9 April, 2024. It is respectfully submitted that during the pendency of the Section 36 Application and while arguments on the said application are being heard, the Respondent has now removed the said news item from its website.

11. The Petitioner therefore prays that being a necessary and proper party, the Learned Presiding Arbitrator may kindly be impleaded in the present proceedings. The Petitioner respectfully submits that such impleadment will not alter the nature of the proceedings or introduce a new cause of action."

4. The reliefs from the instant application are also quoted below:

"a) An order be issued directing Hon'ble Mr. Justice (Retd.) V. S. Sirpurkar i.e., the Learned Presiding Arbitrator of the Tribunal be impleaded as party in the instant proceedings;

b) Pass such other and/or further orders as this Hon'ble Court may deem fit and proper in the facts of the present case."

5. The award-holder/respondent has filed its affidavit-in-opposition and, inter alia, contended as follows:-

"4. The Respondent TML has broadly made, inter alia, the following submissions on 7th January, 2025, 5th March, 2025 and 6th March, 2025:

a. An arbitral award can only be stayed unconditionally if a prima facie case that the making of the award was induced or effected by "fraud" or "corruption" is made out. No such case has been made out in the S.36 (2) application and no particulars to that effect have been pleaded. Therefore, on this ground alone, no unconditional stay can be granted. No further reason is necessary to reject the prayer of WBIDC for unconditional stay.

b. Grounds for setting aside the award under Section 34 cannot be considered in this application under Section 36(2). The enquiry in the S. 36(2) application has to be confined to the statutorily mandated grounds following the legislative policy. Accordingly, the question of "bias" which is not falling within the scope of Section 36(2) read with Section 36(3) cannot be considered at all.

c. An allegation of bias on the part of a Tribunal cannot be equated with the allegation of fraud or corruption flowing from alleged inducement.

d. Bias of the nature alleged is not covered by either "fraud" or "corruption" in terms of the second proviso to Section 36(3) of the 1996 Act.

e. The arguments of TML answering the charge of “bias” was made in the alternative without prejudice to the above i.e. this Hon’ble Court should not and need not go into the question of “bias”. The case of the petitioner was and is misplaced and misconceived.

f. The said application does not deal with this point.

6. The argument of bias is dealt with hereunder without prejudice to the above.

a. WBIDC’s case for unconditional stay of the Award is only a case of alleged “bias” on the part of the Presiding Arbitrator only because he attended certain events concerning a third party who are dealers of Tata cars. This does not fall within any of the specific entries in the 5th Schedule or the 7th Schedule read with Section 12 of the 1996 Act. These two schedules are exhaustive. Therefore, the question of any bias does not arise. In any case, “bias” would not be a ground for unconditional stay under Section 36(2). The 1996 Act flows from a contract of arbitration where the parties have agreed to have their disputes settled by a private forum and not the Court. The 1996 Act has laid down the contractual parameters of impartiality and independence of the arbitrators. “Impartial” according to, inter alia, the Law Lexicon by P. Ramanatha Aiyar, 5th Edition, means “...a man who is impartial is one who is not biased in favour of one party more than another....The primary idea contained in the definition is freedom from personal bias.....”. Although “bias” has not been defined in the 1996 Act, the two schedules are the heads of bias contractually agreed and no other head is permissible. The petitioner has not dealt with this argument in the said application. I crave leave of this Hon’ble Court to

refer to further material in this regard at the time of hearing, if necessary.

b. In any event, WBIDC was aware of the Learned Presiding Arbitrator's act of attending the events during the arbitral proceedings but did not raise the same before the Tribunal within 15 days of knowledge as required under Section 13(2) of the 1996 Act. From pages 224 to 227 of the S. 36(2) application (from the "Related News" and "Latest News" sections), it is clear that WBIDC had knowledge of the above at least on 12th September, 2022 or thereabout but consciously waived their right to object. Yet WBIDC has claimed in paragraph 25 of the S.36(2) application that they came to know of the Learned Presiding Arbitrator attending the events "recently" and post-award. This is contrary to the articles annexed by them. Therefore, the ground of bias cannot at all be raised at this stage. In this regard, a short list of relevant dates demonstrating the fact that WBIDC had knowledge of the Learned Presiding Arbitrator attending certain events organised by car dealers (not by TML) during the pendency or arbitral proceedings (along with annexures thereto) is annexed hereto and marked with the letter "A". In connection with this knowledge (of the article forming the basis of all allegations) on the part of the Petitioner, the Respondent had prepared and served a supplementary affidavit on the Petitioner during the hearing of the matter which was vehemently opposed by the Petitioner in view of the stage of the proceedings. However, the issue of "Knowledge" of the article has acquired further importance in view of the pleadings in the said application and therefore in the interests of justice it

has become imperative to rely upon such supplementary affidavit. If the Respondent TML is permitted to rely on the same, no prejudice shall be caused to the Petitioner since an advance copy as also an affirmed copy of the same was served on the Petitioner on 5th March, 2025 and 6th March, 2025 respectively. In any case, the supplementary contains submissions already made by the Respondent TML on 7th January, 2025 save and except the letter issued by Hitavada. In this regard, a copy of such supplementary affidavit along with the covering letter issued by the Learned Advocate-on-record of the Respondent is annexed hereto and marked with the letter "B". The matters raised in that affidavit has also not been dealt with by the Petitioner despite knowledge.

c. Moreover, if the ground of bias is the main cause of action of the Petitioner and the Petitioner accepts that the matter cannot be decided in the absence of a necessary and proper party, the proposed party cannot be added beyond the period of limitation which has long expired.

d. Any case of "fraud" or "corruption" would have to be visible at the first blush and the facts ought to be undisputed. In this case, the so-called instance of bias and its alleged date of discovery by WBIDC are in serious doubt in light of what has been stated above. Therefore, quite apart from the fact that no case of fraud or corruption has been made out, even in respect of bias no unimpeachable case has been made out since there is heave doubt as to the claimed date of knowledge of the alleged acts of the Learned

Presiding Arbitrator. Therefore, on this ground as well, the S.36(2) application should fail.

e. As an alternative case, it was argued that if bias is alleged, all the members of the Arbitral Tribunal (since the arbitral award in this case is a unanimous award) ought to be made parties. Even then, such argument would not be relevant at the Section 36 (2) stage since the judicial decisions cited by both the Petitioner and Respondent on the point of the Learned Arbitrator being made party were all pronounced in matters arising out of Section 34 applications. This is apparent from the cases cited by the Petitioner on 9th April, 2024 before the previous Bench as also before this Hon'ble Court on 16th July, 2024 and 22nd November, 2024."

6. Denying the contentions of the award-holder/respondent, the award-debtor filed its affidavit-in-reply. The parties have filed their respective written notes on argument.

Submissions :-

7. Mr. Kishore Datta, learned Advocate General for the State appearing for the award-debtor submits that the award dated **October 30, 2023** was passed by a three members arbitral tribunal. The award-debtor has applied before this court for setting aside of the award under Section 34 of the Arbitration Act. The award-debtor has filed an independent application under **sub-Section (2) to Section 36 of the Arbitration Act** praying for unconditional stay of operation of the award. In the said proceeding, the instant interlocutory application has been filed.

8. The principal argument of the learned Advocate General is that the second proviso to **sub-Section (3)** to **Section 36 of the Arbitration Act**, *inter alia*, provides that if the court is satisfied that a *prima facie* case is made out that the making of arbitral award was induced or effected by **FRAUD** or **CORRUPTION**, the court shall stay the award unconditionally pending disposal of the challenge **under Section 34** to the award. He submits that the disclosures to the application filed by the award-debtor under Section 36 (2) of the Act and also in the instant application would demonstrate that one of the members of the arbitral tribunal on repeated occasions had attended the various programmes where diverse new model of cars manufactured by the award-holder were launched. The admitted position is that all such launching programmes were held during pendency of the arbitral proceeding but since all those facts were not within the knowledge of the award-debtor prior to the award being made and published, the award-debtor could not apply before the tribunal for termination of the mandate of the learned member of the tribunal concerned. However, the moment it came to the knowledge of the award-debtor, though after the arbitral award was made and published, the petitioner raised those pleas as their grounds while applying under **Section 34 of the Arbitration Act**. On this plea, the award-debtor has also prayed for unconditional stay of the arbitral award under **Section 36 (2) of the Act**. The main contention of the award-debtor is that the arbitrator concerned did not disclose these facts during the arbitration. He acted bias.
9. To support his contentions, learned Advocate General relied upon principally on two decisions of the Hon'ble Supreme Court which are :-

- i) ***In the matter of: Vinod Bhaiyalal Jain vs. Wadhwani Parmeshwari Cold Storage, reported at (2020) 15 SCC 726*** and
- ii) ***In the matter of: Microsoft Corporation vs. Zoai Founder, reported at 2023 SCC Online Del 3800.***

10. While deciding the issue before it, the Hon'ble Supreme Court held that since an allegation of fraud has been raised against the arbitrator concern, the arbitrator was directed to be impleaded in the **Section 34** proceeding, so that the arbitrator can get an opportunity to defend the allegation against him.

11. Learned Advocate General while advancing his submissions has submitted that '**BIAS**' is an element of '**FRAUD**'. Therefore, when the expression '**FRAUD**' has been included in the second proviso to **sub-Section (3)** to **Section 36 of the Arbitration Act** and the incorporation was made by way of a subsequent amendment to the Act, the legislature thought it fit that if fraud is established which includes '**BIAS**' then the award-debtor, as of right, is entitled to an order for unconditional stay of the award. To adjudicate this allegation of fraud and/or bias, the concerned member of the arbitral tribunal is required to be impleaded in the **Section 34** proceeding as well as in the **Section 36 (2)** proceeding under the Arbitration Act.

12. In support of his contentions that the fraud cannot be put in a straight-jacket and has a very wide connotation in legal parlance and fraud is infinite in variety, he has placed reliance upon a decision of the Hon'ble Supreme Court ***In the matter of : Venture Global Engineering vs. Satyam Computers Services Limited, reported at (2010) 8 SCC 660.***

13. On the same proposition of law argued by the learned Advocate General, he has relied upon several other decisions which are mentioned in the written notes on argument. In the light of the above, the award-debtor/applicant prays for **impleadment** of the concerned member of the arbitral tribunal in this **Section 36 (2)** proceeding.
14. This court has read all decisions and ultimately is of the view that, to adjudicate upon the instant application with its limited scope, all those judgments are not required to be discussed for the same proposition individually and those may be considered at the appropriate stage.
15. Mr. Sudipto Sarkar, learned Senior Advocate with Mr. Sidhartha Mitra, learned Senior Advocate being ably assisted by Mr. Dipan Kumar Sarkar, learned Advocate appearing for the award-holder (TML) submits that the instant application has been filed by the award-debtor as a delaying tactics at the fag end of hearing of the said Section 36(2) application. The instant application is a result of an afterthought. Mr. Sarkar, learned Senior Advocate has submitted that in the event an allegation of fraud is alleged in a proceeding for setting aside of an award against an arbitrator, such arbitrator is required to be impleaded in the setting aside proceeding so that he can get an opportunity to deal with the charge against him. In support, he has relied upon a judgment of the Madrash High Court ***In the matter of : Kothari Industrial Corporation Limited vs. Southern Petrochemicals Industries Corporation Limited, reported at 2021 SCC Online Mad 5325.***
16. Mr. Sarkar further submits that **bias** is not a ground included within the meaning of the second proviso to Section 36 (3) of the Arbitration Act. The provision even has clearly codified that only on **fraud** and **corruption**, an

award can be unconditionally stayed. The incidents of fraud and corruption are also well explained in the relevant schedules to the Arbitration Act, which are part of the statute. Bias not being included in those specified statutory provisions, cannot be a ground for unconditional stay of an award. The award-debtor has not pleaded any particulars of fraud or corruption as defined in the statute.

17. He further submits that a **prima facie** case under Section 36 (3) must mean a finding of fraud on the face of the record or from a first blush of the award. In this regard, he has relied upon a judgment of this court ***In the matter of : SRMB Srijan Ltd. vs. Great Eastern Energy Corporation Ltd., reported at 2024 SCC Online Cal 2089.***
18. In addition to the above, learned Senior Counsel further submits that the incidents cited by the award-debtor had alleged to have happened contemporaneously during 2022 prior to the award being passed. With reference to the news articles relied upon on behalf of the award-debtor, being part of the records, Mr. Sudipto Sarkar, learned Senior Advocate has submitted that all these incidents were within the knowledge of the award-debtor contemporaneously but still the award-debtor chose not to take out appropriate application before the arbitral tribunal, when the reference was pending before it. The award-debtor, therefore, has waived its right to take this plea at this belated stage.
19. In the light of the above, Mr. Sarkar submits that the instant application should be dismissed and there is no merit in the submissions made on behalf of the award-debtor.

20. In addition to the above, several other submissions were also made by Mr. Sarkar, learned Senior Advocate which shall be evident from the written notes on argument filed on behalf of the award-holder. Various judgments on different points have also been referred to. After reading the entire notes on argument, this court is of the view that, all those submissions and judgments are not required to be discussed at this stage while adjudicating the instant application which has a very limited and narrow scope and those may be considered at the appropriate stage.

Decision :-

21. After considering the rival submissions made on behalf of the parties and on perusal of the materials on record and after mindful consideration on the written notes on argument submitted on behalf of the parties, this court is of the view that the instant application has a very limited scope for adjudication. Various points have been taken relying upon diverse judgments by the parties mentioned in their notes on argument, only those which according to this court found to be extremely necessary for adjudication, are only dealt with. All those submissions may be considered, if necessary, at the subsequent stage of the proceeding.

22. At the threshold, it appears to this court that the basis of the instant application are the law laid down by the Hon'ble Supreme Court ***In the matter of : Vinod Bhaiyalal Jain (supra)*** and ***Microsoft Corporation (supra)***. Both the said judgments were delivered and the law was laid down in a **Section 34** proceeding. While adjudicating a **Section 34** proceeding, the setting aside court, though not a court of appeal but with its limited authority and jurisdiction shall cause the enquiry and review the award in detail within

its permitted jurisdiction and limitation. An arbitral award whether would vitiate on the ground of fraud or corruption and/or the ground of bias alleged against the arbitral tribunal, shall be adjudicated at the **Section 34** stage. When an application has been filed under **Section 36 (2)** praying for an unconditional stay of an award, the applicant must satisfy the court that there is a ground of fraud or corruption on the part of the tribunal within the meaning and scope of **sub-Section (3) to Section 36 of the Arbitration Act**. At that stage the setting aside court in exercise of its power under Section 36 (2) and (3) of the Arbitration Act, shall first has to arrive at a *prima facie* view that there has been an element of fraud or corruption as defined under sub-Section (3) to Section 36 of the Act. The scope of adjudication under Section 34 and Section 36(2) and (3) of the Arbitration Act are totally different.

23. By filing the instant application, the award-debtor prays for impleadment of the concerned member of the arbitral tribunal even before adjudication of the said pending Section 36 (2) application. Unless this court arrives at a *prima facie* finding of fraud or corruption or even bias as alleged by the award-debtor in the facts of this case, the question of impleadment of the concerned member of the arbitral tribunal does not and cannot arise. The famous phrase is reiterated once again that cart cannot be placed before the horse.

24. The decision relied upon on behalf of the award-holder ***In the matter of : Kothari Industrial Corporation Limited (supra)*** is also a **Section 34** case.

25. The application filed in Section 36 (2) is pending. While adjudicating the said application, the court would have jurisdiction to decide whether any

prima facie case for fraud or corruption has been made out, so that there can be an order for unconditional stay of the arbitral award. Therefore, unless the said application is finally adjudicated upon on its own merit and until this court comes to a specific prima facie finding of fraud or corruption and/or bias, as alleged on behalf of the award-debtor, the question of impleadment, as prayed for by the appellant/award-debtor, would not arise.

26. As argued by the learned Advocate General that the expression '*bias*' though not specifically included under sub-Section (3) to Section 36 of the Arbitration Act but the said expression '*bias*' includes an element of fraud is also not within the scope of adjudication of the instant application. The same can be considered at the appropriate stage but not at this stage.

27. In view of the foregoing reasons and discussions, this court is of the firm and considered view that the instant application being **IA No. GA 1 of 2025** is premature and accordingly stands **dismissed** without any order as to costs.

(Aniruddha Roy, J.)