

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

ARB. A. No. 8 of 2024

1. State of Sikkim,
Represented by and through the PCE-cum-Secretary,
Energy and Power Department,
Government of Sikkim,
Gangtok – 737101.

2. Power Department,
Represented by the Chief Engineer (North),
Government of Sikkim,
Gangtok – 737101.

3. Power Department,
Represented by the Superintending Engineer (North),
Government of Sikkim,
Gangtok – 737101.
- Appellants

versus

Chhabil Dass Agarwal,
S/o Late Deepchand Agarwal,
Resident of 5/1 Sirwani Road,
Singtam,
P.O. and P.S. Singtam – 737134.

..... Respondent

**Appeal under Section 37 of the Arbitration & Conciliation
Act, 1996.**

[against the impugned judgment dated 30.05.2024 passed by the learned Judge,
Commercial Court at Gangtok in Commercial (Arbitration) Case No. 02 of 2022 in State
of Sikkim & Ors. vs. Chhabil Dass Agarwal]

Appearance:

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Mohan Sharma, Advocate and Mr. Sujan Sunwar, Assistant Government Advocate for the Appellants.

Mr. Rohan Batra, Mr. Dhruv Sethi and Mr. Hemlal Manger, Advocates for the Respondent.

J U D G M E N T

Date of Hearing : 13.08.2025, 22.08.2025, 24.09.2025,
16.10.2025 & 06.11.2025
Judgment reserved : 13.11.2025
Judgment pronounced & uploaded: 10.12.2025

Bhaskar Raj Pradhan, J.

This is an appeal under section 37 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act).

2. The facts pertinent for disposal of the present appeal can be briefly summarised as under:

(i) The appellants and the respondent had entered into a contract agreement dated 12.10.2004 for (i) installation of additional 66KV bay at 66/11KV Phodong substation required for connection of Khamdong-Phodong 66KV line; (ii) drawing of associated new 11KV three phase heavy duty line on ACSR dog conductor from new 2x5MVA, 66/11KV substation at Mangan; and (iii) renovation/refurbishing of 66/11KV substation at Phodong. The work had to be completed within seven months but due to several factors, it could be completed only on 18.02.2008. The cost of work was Rs.1,60,26,000/- and the respondent was paid a sum of Rs.1,58,75,669/- by the appellants on 31.03.2017.

(ii) Dissatisfied with the amount of payment received for the contract work, the respondent invoked the arbitration clause, claimed escalation cost and interest on delayed payment. Consequently, the sole Arbitrator was appointed by this Court vide order dated 08.10.2020 in Arb. P. No. 1 of 2020. After completing the proceedings, the impugned award was passed on 08.11.2021 holding that the respondent is entitled to both escalation cost of Rs.25,00,418/- along with interest @10% per annum from 2008 to 2021, which amounted to Rs.2,38,88,914/-. The total amount payable by the appellants to the respondent was calculated at Rs.2,63,89,332/-. Aggrieved with the impugned award, the appellants filed an application under section 34 of the Arbitration Act, which was rejected by the learned Commercial Court.

(iii) The respondent, in their claim before the learned Arbitrator, asserted certain facts which were admitted by the appellants in their statement of defence. The respondent asserted that he had completed the work on 18.02.2008 by raising loans from borrowers, his family business and also by divesting savings. That, the appellants did not make any payment to the respondent before completion of the work on 18.02.2008 because of which there was immense delay.

That, the respondent had completed the work to the value of Rs.1,58,75,670/- and payment made to the respondent for the first time on 31.03.2017 was Rs.1,58,75,670/-, although the work was already completed on 18.02.2008. That, during 2004, the respondent had executed two contract works, one at Mangan and the other at Phodong under two different contract agreements and both the works got completed in 2008, however, the appellant failed to make payment to the respondent. That, for both the works the respondent had written several common letters for release of payment but without any result. That, although, mobilization advance of 25% value of the work was payable, it was never paid to the respondent. Although, work was completed in all respects by 18.02.2008, payment was released after nine years only on 31.03.2017.

(iv) The appellants in their statement of defence replied to the aforesaid assertions of the respondent stated in paragraphs 1(vii) to 1(xiii) of the claim petition by admitting thus, “11. *That the contents of paragraph 1(vii) to 1(xii) of the statement of claim are matters of record and are admitted to the extent borne by records and anything contrary thereof the petitioner be put to strict proof thereof.*”

3. The learned Commercial Court on the basis of identical reasoning in Commercial (Arbitration) Case No. 3 of 2022 did not interfere with the arbitral award rendered by the learned Arbitrator and rejected the petition under section 34 of the Arbitration Act.

4. The present appeal under section 37 of the Arbitration Act, preferred by the appellants raises identical grounds of appeal before this Court as in Arbitration Appeal No. 9 of 2024. The learned Additional Advocate General once again relies upon purported 'clause 4h' of the contract agreement and the judgment of the Hon'ble Supreme Court in ***Pam Developments Private Limited vs. State of West Bengal & Another***¹, which have both been dealt with in our judgment rendered in Arbitration Appeal No. 9 of 2024.

5. In addition, we also notice that the contract agreement dated 12.10.2004 does not have 'clause 4h' or a similar clause as in the contract agreement dated 24.02.2004 involved in Arbitration Appeal No. 9 of 2024. The learned Additional Advocate General was also not able to point out 'clause 4h' or a similar clause in the contract agreement dated 12.10.2004.

¹ (2024) 10 SCC 715

6. We, therefore, dismiss the present appeal in terms of the judgment rendered by us in Arbitration Appeal No. 9 of 2024.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

Approved for reporting : **Yes**
Internet: **Yes**
bp