

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

DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

ARB. A. No. 11 of 2025

Union of India,

Represented by the Chief Engineer (P)

Swastik C/O. 99 APO

Pin: 931717

Email: bro-swtk@nic.in

.... **Appellant**

versus

M/s Mahabir Prasad Agarwal

1 AA, Government Contractor

Namchi Bazar, South Sikkim,

Sikkim, Pin: 737126

Email: vikashalto@yahoo.in

..... **Respondent**

Appearance:

Ms. Sangita Pradhan, Deputy Solicitor General of India (*through* V.C.) with Mr. Amit Kumar Sharma, Advocate, for the Appellant.

Mr. Jorgay Namka, Senior Advocate with Mr. Lahang Limboo, Advocate for the Respondent.

Date of Hearing : 24.04.2026

Date of Judgment : 12.05.2026

Date on which uploaded : 12.05.2026

J U D G M E N T

A. Muhamed Mustaque, C.J.

This is an appeal filed by the Union of India challenging judgment dated 09.07.2025 passed by the learned Commercial Court, Gangtok in an application filed under Section 34 of the

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Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), refusing to set aside the award of the Arbitral Tribunal.

2. In a matter arising out of a contract between the Appellant and the Respondent, a dispute arose as to the entitlement of payment claimed by the Respondent for the disposal of surplus material beyond 1000 meters lead.

3. Consequent upon appointment of an Arbitrator by this Court, the dispute was adjudicated by Justice Pranab Kumar Chattopadhyay, retired Judge of Calcutta High Court as a Sole Arbitrator. The arbitral award is a sum of ₹7,48,74,932.80 payable with interest @9% per annum from the date of filing the statement of claims till the date of the award.

4. Aggrieved by the award, the Appellant filed an application to set aside the award invoking Section 34 of the Act before the learned Commercial Court, Gangtok but the learned Commercial Court declined to interfere.

5. Learned Deputy Solicitor General of India, Ms. Sangita Pradhan, assailing the Judgment of the learned Commercial Court, Gangtok, argued that the Sole Arbitrator committed manifest error in allowing the claim of muck disposal without cogent evidence and overlooking conditions of contract. Elaborating the argument, the learned Deputy Solicitor General of India submits that the site for disposals was identified by the State Government of Sikkim and further pointed out that by Annexure A3, contractor therein was intimated that no extra payment shall be made for disposal of muck other than the specified site identified by the State Government of Sikkim.

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6. On the other hand, learned Senior Counsel Mr. Jorgay Namka appearing for the Respondent, submits that the Arbitrator awarded and allowed the claim stating reasons and Annexure A3 was never produced before the Arbitrator. It is submitted that there was no dispute about the disposal of muck beyond the last point of the road beyond 19.35 kilometers and it was measured by the Officers of the Appellant. It is submitted that the amount was also calculated in accordance with the Military Engineering Services Standard (Schedule of Rates), 2010. It is argued that the Appellant failed to provide a muck dumping yard within the 1000 meters as agreed in the contract.

7. The question is whether the Arbitral Tribunal passed the award confining the dispute arose out of contract or not.

8. On going through the award, it can be seen that the contractor executed the work based on the terms and conditions of contract. The learned Sole Arbitrator appreciated the evidence based on the contract entered between the parties. Though, there was an alleged delay on the part of the Respondent in execution of the work, the Arbitral Tribunal appreciated the evidence and found that there was no fault on the part of the Respondent.

9. Though the Respondent raised several claims, the Arbitral Tribunal allowed claim no.3, which was the claim for additional cost incurred on muck dumping lead and financial charges. As per the terms of the contract, the lead for disposal or dumping such soil and rocks is supposed to be within 1000 meters. The Tribunal relied on Clause 4.3.8 of the particular specifications of Statement of Claims and Clause 301.3.11 of MORT&H specifications of road and bridge

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works. MORT&H provides for measurement and method of computing claim of disposal of muck beyond 1000 meters lead. It is not a dispute that these specifications do not apply. Anyway, as agreed by the parties, the dumping act shall be within 1000 meters. If the dumping is beyond 1000 meters, as agreed in the contract, questions then arise whether specifications prescribed by the MORT&H as such for dumping beyond 1000 meters would apply or not.

10. It has come out through the evidence that muck dumping areas were beyond 19.8 KM, at 20.60 KM, KM 23.50 and KM 23.70, calculated at average areas of 21.9 KM.

11. We may not have a doubt that even in the absence of MORT&H specifications, principles of Quantum Meruit would apply unless specifically excluded by the contract. MORT&H specifications in fact have to be read along with the other specifications of the contract unless specifically excluded.

12. An attempt was made by the learned Deputy Solicitor General of India to rely upon Annexure A3. We find no justification to consider the same, as it has been produced for the first time through an application under Section 34 of the Act. Even assuming that Annexure A3 merely reiterates the contractual terms, it does not advance the case of the Appellant. The clause of the contract referred to in the said Annexure stipulates that the contractor shall utilize materials obtained from excavation for purposes such as filling road embankments, existing pits, landscaping, etc., for which no extra payment shall be made. However, the present dispute does not fall within the ambit of that clause. The issue in question

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pertains to the transportation of such materials beyond a lead of 1000 meters, as agreed, for dumping purposes.

13. The scope of dispute before the Arbitral Tribunal cannot be enlarged by producing certain documents along with the application under Section 34 of the Act.

14. The Arbitral Tribunal confined the scope of inquiry within the subject of contract.

15. The learned Commercial Court found in the application under Section 34 that there was no scope for interference.

16. In an Appeal, our scope of inquiry is limited and we cannot enter into an exercise for re-appropriation of evidence like a normal Appellate Court. The question is only that the matter is confined to the parameters under Section 34.

17. The learned Commercial Court, rightly looking into the Arbitral Tribunal award found that no case is made out for interference invoking under Section 34.

18. We affirm the order and dismiss the Appeal.

19. Trial Court records shall be remitted back to the learned Commercial Court, Gangtok.

**(Bhaskar Raj Pradhan)
Judge**

**(A. Muhamed Mustaque)
Chief Justice**

Approved for Reporting: Yes/No

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