IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP(C) NO.22917 of 2026)

OPTIMAL POWER SYNERGY INDIA PVT. LTD. THROUGH DIRECTOR **APPELLANT(S)**

VERSUS

BHARAT HEAVY ELECTRICALS LIMITED-ELECTRONICS DIVISION **RESPONDENT(S)**

WITH

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP(C) NO.23163 of 2026)

O R D E R

Leave granted.

2. Briefly stated, the facts of the case are that the appellant herein is stated to be a small manufacturing enterprise, whereas the respondent is a Government of India undertaking incorporated under the provisions of the Companies Act, 1956 and is, *inter alia*, engaged in the business of setting up power plants and equipment.

Signature Not Verified
Digitally signed by RADHA SHARMA
Date: 2026.11.26 16:30:45 IST
Reason:

2.1 Between the years 2011 and 2014, the appellant received several purchase orders from the respondent

for the supply of Solar Power Conditioning Units and items relating to SPV Wind Diesel Power Plants. Pursuant thereto, eight contracts came to be executed between the parties. Subsequently, the respondent alleged that the appellant had failed and/or neglected to complete the work in respect of certain items and, accordingly, withheld payment pertaining to such unfinished work.

2.2 Aggrieved by the withholding of payments, the appellant preferred an application dated 29.08.2017 under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, "the MSMED Act, 2006") before the West Bengal State Micro Small Enterprises Facilitation Council. The Facilitation Council initiated conciliation proceedings under Section 18(2) of the MSMED Act, 2006, of which the respondent was duly informed. However, despite two hearings being conducted, the respondent did not participate in the conciliation proceedings. Consequently, the conciliation failed, which was duly communicated to the parties, and the matter was

referred for arbitration under Section 18(3) of the MSMED Act, 2006, giving rise to Case No. 107 of 2017.

2.3 The Arbitral Tribunal, *vide* award dated 24.09.2019 passed in Case No. 107 of 2017, allowed the claim of the appellant and awarded a sum of Rs. 61,08,654/-, together with interest at three times the bank rate notified by the Reserve Bank of India, compounded with monthly rates, in terms of Section 16 of the MSMED Act, 2006. The appellant was further directed to submit the computation of interest on the principal amount, duly quantified by a Chartered Accountant, along with its claim for the principal amount.

2.4 Aggrieved by the aforesaid award, the respondent instituted Arbitration Petition No. AP/175/2020 before the Calcutta High Court, seeking to set aside the arbitral award dated 24.09.2019. The respondent also filed an application, being GA No. 1 of 2020 in AP/175/2020, under Section 36 of the Arbitration and Conciliation Act, 1996, seeking stay of

operation of the said award. On the other hand, the appellant instituted Execution Application No. EC/156/2020 before the High Court, seeking execution of the arbitral award.

2.5 The High Court, by order dated 01.09.2021, disposed of GA No. 1 of 2020 in AP/175/2020, directing the respondent to deposit 75% of the total awarded amount, comprising the principal amount and interest quantified by the Chartered Accountant at Rs. 2,78,88,228/-. The respondent was directed to deposit 50% of the aforesaid amount in cash with the Registrar, Original Side of the High Court within three weeks and furnish a bank guarantee from a reputed bank for the remaining 50% within the same period.

2.6 Subsequently, respondent filed another application, being GA No. 3 of 2020 in AP/175/2020, under Section 16 of the Arbitration and Conciliation Act, 1996, seeking stay of operation of the arbitral award dated 24.09.2019, as well as the execution

proceedings in EC/156/2020. The appellant, on the other hand, filed GA No. 1 of 2020 in EC/156/2020, seeking release of the amount already deposited by the respondent, having regard to its precarious financial condition.

2.7 On 06.12.2021, the learned Single Judge of the High Court released the matter in view of the pendency of the review petition. Thereafter, on 07.02.2022, the Hon'ble Chief Justice of the High Court, in exercise of his administrative powers, assigned the matter to a particular learned Single Judge for consideration of all the pending applications.

2.8 The High Court, by order dated 23.03.2022, allowed GA No.1 of 2020 in EC/156/2020, filed by the appellant and permitted it to withdraw 75% of the principal amount awarded by the Arbitral Tribunal within a period of two weeks, without furnishing any security. By the same order, GA No.3 of 2020 in AP/175/2020 filed by respondent was also allowed and the operation of the arbitral award dated 24.09.2019

was stayed until the disposal of the pending proceedings.

2.9 Aggrieved by the aforesaid order, the respondent herein preferred an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, being APO/41/2022 in EC/156/2020, before the Division Bench of the High Court. The respondent also filed GA No. 3 of 2021 in AP/175/2020 before the learned Single Judge, seeking stay of the order dated 23.03.2022, insofar it permitted the appellant to withdraw 75% of the principal amount awarded by the Arbitral Tribunal. By order dated 28.03.2022, the learned Single Judge stayed the operation of the order dated 23.03.2022, until 01.04.2022, observing that, in view of the appeal preferred by the respondent, the question as to whether the stay ought to be extended was to be considered by the Appellate Court.

2.10 Thereafter, the learned Single Judge of the High Court, by judgement and order dated 29.03.2023, dismissed AP/175/2020 and upheld the arbitral award

dated 24.09.2019. The learned Single Judge also imposed a cost of Rs. 5,00,000/- on the respondent for the protracted litigation.

2.11 Aggrieved by the aforesaid judgement and order, the respondent preferred another appeal under Section 37 of the Arbitration and Conciliation Act, being APO/85/2023 in AP/175/2020, before the Division Bench of the High Court. In the said appeal, the respondent, *inter alia,* contended that the dispute in question was a commercial dispute within the meaning of the Commercial Courts Act, 2015 and that the proceedings had been adjudicated by a learned Single Judge who was not designated as a Commercial Court under Section 4(2) thereof. It was, therefore, contended that the judgement and order passed by the learned Single Judge was without the requisite jurisdiction.

2.12 The Division Bench of the High Court, by the impugned judgement and order dated 13.05.2026, disposed of APO/41/2022 arising out of EC/156/2020 and

APO/85/2023 arising out of AP/175/2020/. The Division Bench set aside the judgement and order passed by the learned Single Judge dated 29.03.2023 on the ground of lack of jurisdiction. It was observed that, on the date of institution of the proceedings challenging the arbitral award, the value of the award exceeded rupees two crore and therefore, the proceedings ought to have been instituted before the Commercial Division of the High Court. However, neither of the parties had taken steps to have the proceedings under the Arbitration and Conciliation Act, 1996 transferred to the Commercial Division.

2.13 The Division Bench further observed that although the Chief Justice of the High Court had assigned the proceedings to the learned Single Judge, the said Judge was not designated as a Commercial Court under Section 4(2) of the Commercial Courts Act, 2015, either on the date of such assignment or on the date of passing of the judgement and order dated 29.03.2023. Accordingly, the Division Bench held that AP/175/2020 could not have been adjudicated by the non-commercial

division of the High Court. Consequently, in exercise of powers under Section 15(5) of the Commercial Courts Act, 2015, the proceedings in AP/175/2020 and EC/156/2020 were directed to be placed before the Commercial Division of the High Court for consideration in accordance with law.

3. Being aggrieved by the order dated 13.05.2026 passed by the Division Bench of the High Court of Calcutta (Civil Appellate Jurisdiction) (Original Side) in APO/41/2022 and APO/85/2023 by which the appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act" for the sake of brevity) were allowed and the matter(s) was remanded to the learned Single Judge of the Commercial Division for the purpose of rehearing the application filed under Section 34 of the said Act, the appellant(s) is before this Court.

4. We have heard learned counsel for the appellant and learned counsel for the respondent. We have perused the material on record.

5. Admittedly, the respondent herein preferred the application under Section 34 of the Act by invoking the Ordinary Original Civil Jurisdiction of the High Court as against an interim order passed in the said matter as AP/175/2020 along with EC/156/2020 which was an execution proceeding were assigned by the Hon'ble Chief Justice of Calcutta High Court to the learned Single Judge. For ease of reference, we extract the Assignment Order related to the Original Side by the Chief Justice of the Calcutta High Court dated 07.02.2022 which is an administrative order by the Master of the Roster as under:

"Assignment Orders related to Original Side

Cause Title	Case No.	Date of Assignment	Assigned to
Dr. Saumabha Dasgupta -vs- The Commissioner of Income Tax (Appeals) – 6, Kolkata & Anr.	ITAT 47/2020 with GA1/2020, GA 2/2020 & GA 3/2020	04.02.2022	The Division Bench headed by Hon'ble Justice Harish Tandon.
Bharat Heavy Electricals Limited – Electric Division -vs- Optimal Power Synergy India Pvt. Ltd.	1. GA 3/2021 with AP 175/2020 2. EC 156/2020	07.02.2022	Hon'ble Justice Moushumi Bhattacharya

6. By notification dated 11.11.2025 issued by the order of the Acting Chief Justice of the Calcutta High Court by a deeming fiction, the exercise of jurisdiction by Benches, not being a Regular Bench of Commercial Division of the High Court, has to be construed to be exercising powers under Commercial Courts Act, 2015. The said notification reads as under:

"IN THE HIGH COURT OF CALCUTTA

NOTIFICATION

No. 7438-RG Dated 11/11/2025

It is to be hereby notified to all concerned that the Hon'ble Bench/Benches, not being a Regular Bench of Commercial Division or Intellectual Property Rights Division of this Court, while taking up 'Part-Heard' and/or 'Specially Assigned' matters arising out of such Divisions, shall be deemed to be exercising the jurisdiction and powers conferred on those Hon'ble Benches under the Commercial Courts Act, 2015 and Intellectual Property Rights Division Rules of the High Court at Calcutta, 2023 and relevant Rules/Practise Direction to hear up the matters.

By Order of the Hon'ble the Acting Chief Justice

Sd/-
Registrar General,
High Court at Calcutta"

7. The learned Single Judge accordingly heard the application under Section 34 of the Act and dismissed the same. Being aggrieved, APO/41/2022 and APO/85/2023 were filed before the Civil Appellate Jurisdiction (Original Side) by the respondent herein.

8. Having filed the application under Section 34 of the Act before the Ordinary Original Civil Jurisdiction and no objection being raised with regard to the jurisdiction of the learned Single Judge to hear the said application, on being unsuccessful, the appeals were preferred by the respondent(s) before the Civil Appellate Jurisdiction on Original Side. It is for the first time before the Division Bench that a contention was raised by the respondent herein with regard to the jurisdiction of the learned Single judge to hear the application under Section 34 of the Act. The Division Bench of the High Court held that the learned Single Judge who had been assigned the matter by the Chief Justice had no jurisdiction whatsoever and consequently, set aside the order passed by the

learned Single Judge and has now remanded the matter to the Commercial Division of the High Court for being heard afresh on merits. It is the said order of the remand which has been assailed before this Court.

9. We find that the Division Bench of the High Court was not right in allowing the appeals and setting aside the order passed under Section 34 of the Act by the learned Single Judge and thereby remanding the matter to learned Single Judge of the Commercial Division to rehear the application under Section 34 afresh.

10. Firstly, the respondent herein had preferred the application under Section 34 of the Act before the Ordinary Original Civil Jurisdiction of the High Court and not the Commercial Division. Having filed the said application under the said jurisdiction and the occasion arising to allot this matter to a particular Bench, the Chief Justice of the High Court allotted the matter to a learned Single Judge on the Original Side. The said assignment was made by the Chief Justice of

the High Court in exercise of his powers as Master of the Roster and on the Administrative Side. Once the said assignment was made before particular learned Single Judge there was no contention raised with regard to the jurisdiction of the learned Single Judge to hear the said matter as assigned. It is only when the respondent herein was unsuccessful before the learned Single Judge and the appeals were filed invoking Section 37 of the Act before the Division Bench that the issue regarding the jurisdiction of the learned Single Judge to adjudicate upon the matter was raised by the respondent herein. The Division Bench was of the opinion that the matter could not have been heard by that particular learned Single Judge in the Ordinary Original Civil Jurisdiction and the assignment had to be made to the Commercial Division of the High Court. Hence, the matter has been remanded by the Division Bench of the High Court.

11. We observe that once the Master of the Roster, namely, the Chief Justice of the High Court had made an assignment to a learned Single Judge of the High

Court to hear a particular case by Special Orders, no objection could have been raised to the same before the Division Bench of the High Court in appeal particularly when such an objection was not raised before the learned Single Judge by the respondent herein.

12. We note that the respondent herein who did not raise any objection whatsoever to the learned Single Judge being assigned with the case hearing the application under Section 34 of the Act strangely raised objections to the same before the Division Bench of the High Court. In fact, the discussion in the impugned judgment proceeds on the basis of the objections raised by the respondent herein.

13. We find that in the facts of this case, the Division Bench of the High Court has ignored the fact that the Chief Justice as the Master of the Roster had assigned this particular case to the learned Single Judge on the Original Side. This was precisely because the respondent had filed the application under Section

34 of the Act invoking the Ordinary Original Civil Jurisdiction of the High Court and not under the Commercial Division of the High Court. Therefore, it was not expected that the Chief Justice would have assigned this matter to the Commercial Division Bench. Hence, the justification offered by the respondent that the matter had to be heard by the Commercial Division and by the Judge presiding in the Commercial Division, cannot be accepted.

14. The Division Bench of the High Court ought to have noted the fact that there was a specific assignment of this case to a particular Judge by the Chief Justice of the High Court on the administrative side as the Master of the Roster and that ought to have been respected. In the above circumstances, the impugned order is set aside, APO/41/2022 and APO/85/2023 are restored on the file of the Division Bench of the High Court. We request the Division Bench to now hear the appeals on merits as expeditiously as possible and dispose of the same on merits in accordance with law.

15. However, we refrain from imposing costs on the respondent.

16. The appeals are disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

……J.
(B.V. NAGARATHNA)

……J.
(R. MAHADEVAN)

NEW DELHI;
OCTOBER 27, 2026.

ITEM NO.30 COURT NO.3 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 22917/2026
[Arising out of impugned final judgment and order dated 13-05-2026 in APO No. 85/2023 passed by the High Court at Calcutta]

OPTIMAL POWER SYNERGY INDIA PVT LTD
THROUGH DIRECTOR Petitioner(s)

VERSUS

BHARAT HEAVY ELECTRICALS LIMITED-ELECTRONICS DIVISION Respondent(s)

(IA No. 190461/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH
SLP(C) No. 23163/2026 (XVI)
(IA No. 193383/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 193387/2026 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 27-10-2026 These matters were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Ms. Vijaya Bhatia, Adv.
Mr. Ganesh Shaw, Adv.
Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Mr. Varij Nayan Mishra, Adv.

For Respondent(s) Mr. Sourav Roy- 2898, AOR
Mr. Harsh Anand, Adv.
Mr. Anshu Deshpande, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.

2. The appeals are disposed of in terms of the signed order.

3. Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA) **(DIVYA BABBAR)**
ASTT. REGISTRAR-cum-PS **COURT MASTER (NSH)**
(Signed order is placed on the file)