OC-6
OCD-5

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE

APOT/332/2025
IA No.GA-COM/1/2026

MANAGING DIRECTOR BIHAR STATE POWER GENRATION COMPANY LIMITED AND ANR.

-VERSUS-

R S CONSTRUCTION AND ANR.

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Umesh Prasad Singh, Adv.*
Mr. K. R. Thaker, Sr. Adv.
Mr. Shaunak Mukhopadhyay Adv.
Mr. S. K. Poddar, Adv.
Mr. Kumar Manish, Adv.

For the Respondent No.1 : *Mr. Prashant Kumar, Adv.*
Ms. Bhawna Tekriwal, Adv.

HEARD ON : 02.02.2026

DELIVERED ON : 02.02.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated December 4, 2025 passed in AP-COM/21/2023.

2. By the impugned judgment and order, learned Single Judge dismissed a challenge under Section 34 of the Arbitration and Conciliation Act, 1996

assailing the award dated September 17, 2023 passed by the sole arbitrator.

3. Learned senior advocate appearing for the appellant submits that, there is a typographical error in the cause title of the memorandum of appeal. He seeks leave to correct such error. He submits that, Bihar State Power Generation Company is a limited liability company within the meaning of the Companies Act, 2013 and should be described as such. He seeks leave to insert the word “limited” in the cause title of the memorandum of appeal.

4. Learned senior advocate appearing for the appellant submits that, initially a tender was floated. The respondent no.1 became the successful tendered in respect of such tender. Tender was awarded. He points out that the tender was ultimately between the respondent no.1 and Bihar State Power Generation Company Limited and Bihar State Power Holding Company Limited.

5. Learned senior advocate appearing for the appellant submits that, disputes and differences arose between the respondent no.1 and Bihar State Power Generation Company Limited and Bihar State Power Holding Company Limited. Such disputes and differences were sought to be referred to arbitration. He refers to the statement of claim. He submits that, in the statement of claim neither Bihar State Power Generation Company Limited nor Bihar State Power Holding Company Limited were made party respondents. Rather the Managing Director, Bihar State Power Generation Company Limited and the Chairman of Bihar State

Power Holding Company Limited were party respondents. Arbitration proceeded on such basis. Award was passed as against the Managing Director, Bihar State Power Generation Company Limited and Chairman, Bihar State Power Holding Company Limited.

6. Learned senior advocate appearing for the appellant refers to the impugned judgment and order. He submits that, none of the parties to the arbitration agreement were before the arbitral tribunal for the award to be passed, was not taken into consideration. In particular, he refers to paragraph 38 of the impugned judgment and order.

7. Learned advocate appearing for the respondent no.1 submits that, although, arbitration proceedings was initiated against the Managing Director, Bihar State Power Generation Company Limited and the Chairman, Bihar State Power Holding Company Limited, nonetheless by virtue of the ratio of the decisions rendered by the Hon'ble Supreme Court in **(2022) SCC 355 (Bhupesh Rathod vs. Dayashankar Prasad Chaurasia & Anr.)** and **2025 (2) SCC 417 (OPG Power Generation Pvt. Ltd. vs. Enexio Power Cooling Solutions India Pvt. Ltd. & Anr.)**, the same did not vitiate the award. According to him, learned Single Judge was correct in rejecting such contention of the appellant.

8. Leave is granted to the learned Advocate on Record of the appellant to correct the cause title of the memorandum of appeal.

9. Under the provisions of the Act of 1996, arbitration agreement comes into existence if the same is in writing. The Act of 1996 postulates that,

exchange of correspondence can constitute an arbitration agreement, in a given case.

10. In the facts and circumstances of the present case, there is an arbitration agreement in writing. However, the agreement is between the respondent no.1 on one part and Bihar State Power Generation Company Limited and Bihar State Power Holding Company Limited on the other part.

11. The issue is whether or not the Managing Director, Bihar State Power Generation Company Limited or the Chairman, Bihar State Power Holding Company Limited are separate legal entities other than the companies of their respective companies or not.

12. An existing Company within the meaning of the Companies Act, 2013 is a distinct and separate legal entity from its shareholders or the natural persons in management thereof. Such a Company is to be sued or sued in its incorporated name. The issue in the previous paragraph is therefore answered by holding that the Managing Director and Chairman of the two Companies of the two respective Companies are separate and distinct legal entities than the Companies in which they are employed.

13. Under Section 230 of the Indian Contract Act an agent who acts for a disclosed principal is not bound by the contracts entered into on behalf of the disclosed principal. There is no contract to the contrary. Circumstances to presume to the contrary does not exist. In the facts and circumstances of the present case, the Managing Director of Bihar

State Power Generation Company Limited as also the Chairman, Bihar State Power Holding Company Limited are agents of disclosed principals. They cannot be sued, therefore, for the defaults, if any, allegedly committed by the disclosed principals to the respondent No. 1 under the provisions of Section 230 of the Indian Contract Act, 1872, in respect of the contract in question.

14. **Bhupesh Rathod** (*supra*) is a decision rendered under the provisions of the Negotiable Instruments Act, 1881 and Sections 138 and 142 thereof. A criminal complaint was lodged by a natural person accompanied by a Board Resolution of the Company authorising such natural person to initiate legal action. In the facts of that case, it was held that such complaint cannot be dismissed only on the ground that the name of the Managing Director is mentioned first following the post held by him in the company, although the complaint was not found to be perfect. In the facts and circumstances of the present case, it is the Managing Director and the Chairman of the two respective companies who are sought to be sued. We already noted the provisions of Section 230 of the Contract Act.

15. **OPG Power Generation Pvt. Ltd.** (*supra*) is on the Act of 1996. It considers an issue as to whether an arbitration agreement is binding on a non-signatory to such agreement. It invokes the doctrine or group of companies. It is of the view that the group of companies doctrine is premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The doctrine requires the intention to be

gathered from additional factors such as direct relationship with the signatory parties, commonality of subject-matter, composite nature of the transaction and performance of the contract. In the facts and circumstances of the present case, the doctrine of group of companies is not attracted. In this case, a limited liability company is sought to be sued through its disclosed agent, which is not permissible under Section 230 of the Contract Act, 1872.

16. Neither the Managing Director of Bihar State Power Generation Company Ltd. nor the Chairman, Bihar State Power Holding Company Ltd. entered into any arbitration agreement with respondent no.1 for a valid reference for an arbitration to be made in respect of the disputes between the respondent no.1 and those two legal entities. If, at all, there are disputes and differences between the respondent nos.1 and the two legal entities of which the Managing Director and the Chairman were sought to be sued against.

17. In such circumstances, as the award passed are against two individuals, who are separate and distinct from the persons with whom the claimant in the arbitration proceedings entered into the arbitration agreement, the award cannot be sustained.

18. In such perspective, the Court under Section 34 of the Act of 1996 erred in exercising jurisdiction vested upon it in law. In such scenario, the impugned judgment and order is set aside. The award dated September 17, 2023 passed by the learned arbitrator is set aside.

19. APOT/332/2025 along with the connected application is disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

20. I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.