

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

**Present :-**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.**

AP/338/2021

BRIDGE TRACK AND TOWER PRIVATE LIMITED

Vs

SIMPLEX INFRASTRUCTURES LIMITED

For the Petitioner : Mr. Priyankar Saha, Adv.  
Mr. Aasish Choudhury, Adv.  
Ms. Uma Bagree, Adv.

For the Respondent : Mr. Debraj Sahu, Adv.  
Mr. Snehasis Sen, Adv.

Last Heard on : 15.12.2023

Judgment dictated in Court on : 20.12.2023

**Moushumi Bhattacharya, J.**

1. This is an application for appointment of Arbitrator under Section 11(6) of The Arbitration and Conciliation Act, 1996.

2. Both the parties had approached the Court on a previous occasion where the petitioner herein had sought for interim protection under Section 9 of the Act. The said application was disposed of by a judgment dated 19<sup>th</sup> July, 2023 confirming an earlier interim order dated 4<sup>th</sup> August, 2021 and restraining the respondent from dealing with or disposing of the assets and properties in question or creating third party rights in respect thereof.

3. The parties are once again before the Court in the present application.

4. The underlying agreement between the parties can be found in 6 purchase orders issued from June, 2016 – March, 2018. The petitioner was to supply material to the respondent for construction of bridges and other electrical works between different locations in Rajasthan. All of the 6 purchase orders mention the same site description and the contract number, namely, C2907.

5. The dispute relates to the unpaid bills of the petitioner which now amounts to approximately Rs.80 lakhs. The petitioner invoked the arbitration clauses contained in the 6 purchase orders on 12<sup>th</sup> May, 2021. The respondent did not reply to the same. The present application was filed soon thereafter.

6. The only point for the Court's consideration is whether the 6 purchase orders can be consolidated to a single agreement and the notice of invocation seen in that context.

7. Learned counsel appearing for the respondent opposes the prayer for consolidation by submitting that each of the arbitration clauses are separate and distinct and the purchase orders are also unconnected.

8. This point was comprehensively considered by the Court in the judgment delivered in AP 291 of 2021 where the Court found that not only was the opposition to consolidation made at an extremely belated stage but that the respondent had also made payment of Rs.32 lakhs to the petitioner on 27<sup>th</sup> February, 2019 by way of a single cheque drawn on ICICI Bank. The respondent had, in fact, treated the 6 purchase orders as one consolidated agreement. The respondent's one-time payment of Rs.32 lakhs was noted by the Court and given sufficient credence to reject the argument of disparate purchase orders at that stage.

9. Learned counsel appearing for the respondent renews the argument in the present application.

10. The respondent does not have a defence to the payment of Rs.32 lakhs made to the petitioner as a one-time payment and not in respect of an individual purchase order. No documents have been placed in this regard to accept the argument made on behalf of the respondent.

11. The decisions shown to the Court including of *Duro Felguera, S.A. vs. Gangavaram Port Limited*, (2017) 9 SCC 729 are essentially based on the individual facts of each case and on the underlying issue whether the purchase

orders can be linked to one single contract or not. In the present case, all the purchase orders mention the identical site description and also contain the same contract number.

12. The Court came to a similar view albeit with lesser facts in *BTL EPC Ltd. vs. Waree Energies Ltd.* (AP/793/2023) on 13<sup>th</sup> December, 2023 where a similar objection was raised on behalf of the respondent. The arbitration petition was decided in favour of the petitioner and in favour of clubbing of the purchase orders in that matter.

13. Considering the factual position in the present case and relying on the findings of this Court in AP 291 of 2021, this Court is of the view that the 6 purchase orders should be clubbed and an Arbitrator should be appointed for a consolidated reference.

14. AP/338/2021 is accordingly allowed and disposed of by appointing Ms. Sulagna Mukherjee, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

15. The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 23<sup>rd</sup> December, 2023 along with the requisite details of the contact person of the petitioner.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**

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