

OCD-9

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

AP/489/2023

M/S. KRITA ENGINEERING (P) LTD.
VS
SIMPLEX INFRASTRUCTURE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 17th October, 2023.

Appearance:
Mr. Supratim Laha, Adv.
... for the petitioner.

Mr. Snehashis Sen, Adv.
Mr. Abhishek Banerjee, Adv.
Mr. D. Ahmed, Adv.
... for the respondent.

The Court: This is an application under Section 11 of the 1996 Act.
4 Work Orders were issued by the respondent to the petitioner for storing, handling and shifting materials supplied by the respondent to the petitioner for the purpose of installments of HDPE product pipeline for construction of sewer network in Mapusa, Goa and the North Coastal Belt. The estimated value of the work was approximately was Rs.10.31 crores. Each of the Work Orders provide for arbitration as under the General Conditions of Contract(GCC) which was made applicable to the 4 Work Orders.

The Work Orders were dated 24th December, 2012, 26th February, 2014, 1st August, 2014 and 20th May, 2015. There were 2 amendments

made to the Work Order dated 24th December, 2012, on 17th July, 2013 and on 26th July, 2013

The respondents argue that each of the Work Orders contain separate arbitration process.

The claim of the petitioner arises out of the unpaid invoices raised by the petitioner on the respondent. The letters addressed by the petitioner to the respondent on various dates from 18th February, 2020 to 21st December, 2020 are on record. The fact that the parties held at least two meetings on 20th February, 2020 and 21st December, 2020 are also admitted and a part of records. The meetings were with regard to the petitioner's demand on the respondent in terms of unpaid dues. The petitioner's claim is now approximately Rs.8.52 crores. The petitioner invoked the arbitration clause on 22nd March, 2023. The notice of invocation refers to all 4 Work Orders and the fact that the petitioner has performed the work and that the respondent has also made part payments under the 4 Work Orders but failed to clear the outstanding dues amounting to Rs. 8.52 crores approximately. The respondent did not reply to the notice of invocation.

The only point which is before the Court, as argued by learned Counsel appearing for the parties, is whether the 4 Work Orders are to be seen as separate arbitration agreements necessitating four separate references or whether the petitioner can or is entitled to consolidate the 4 Work Orders in terms of a single notice of invocation and a reference.

From the material disclosed to the Court, it is evident that the part payments made by the respondent in favour of the petitioner were not made in terms of individual work orders but in the form of consolidated payments from time to time. The respondent has not produced any document to show that the respondent treated the work orders to be separate arbitration agreements or made the payments in accordance with the invoices raised under the separate Work Orders. The respondent also did not take this point as a rebuttal to the contents of the invocation notice; the respondent did not reply to the invocation notice at all.

A similar point was considered by the Court in 2 other matters namely in *Smt. Bharati Ojha Vs. Simplex Infrastructures Limited* in AP 492 of 2023 and *Sanjay Majumdar Vs. Regent Hirise Private Limited* in AP 352 of 2023 and the respondent in those cases had also urged the point of separate work orders. The Court, however, relied on the connected nature of Work Orders and the fact of the Work Orders being issued in respect of a single project and decided the maintainability point against the respondents. The Court relied on *Ameet Lalchand Shah Vs. Rishabh Enterprises* reported in (2018) 15 SCC 678 to hold that the different Work Orders pertained to a single commercial project and all the 4 Work Orders (agreements in those cases) were interconnected.

In the present case, all the 4 Work Orders relate to the work of installation of HDPE product pipeline and construction of the sewerage

network in Mapusa, Goa and the North Coastal Belt. The respondent issued the Work Orders on the petitioner for execution of the work for this single project. Hence, the respondent's argument of the 4 Work Orders being independent in work or purpose is not acceptable. The Supreme Court decision in *Ameet Lalchand Shah* would squarely be applicable to the facts of the present case.

Considering the fact that the petitioner's grievance of unpaid dues and the respondent's inaction to satisfy the petitioner's claim is a dispute, this Court is inclined to allow and dispose of the application as the disputes are directly relatable to the arbitration agreement and the petitioner can certainly make a consolidated reference of all the four work orders in its notice of invocation.

AP/489/2023 is allowed and disposed of by appointing Mr. Domingo Gomes, Counsel to act as the Arbitrator subject to the learned Arbitrator communicating his/her consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 19th October, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)