

OCD-3

ORDER SHEET

AP-COM/409/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

PAREKH PLASTICHEM DISTRIBUTORS LLP
VS
SIMPLEX INFRASTRUCTURE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 29th February, 2024.

Appearance:

Mr. Shounak Mukhopadhyay, Adv.

Ms. Rupal Singh, Adv.

...for the petitioner

Mr. Snehashis Sen, Adv.

...for the respondent

The Court: This is an application under Section 11 of The Arbitration and Conciliation Act, 1996.

The petitioner's claim is for price of goods sold and delivered to the respondent for a value approximately of Rs.21 lakhs along with applicable interest. The respondent has not paid that sum to the petitioner.

The nub of the dispute is 3 purchase orders by which the respondent raised the demand and the petitioner supplied the goods. The 3 purchase orders contained arbitration clauses. The petitioner made various demands on the respondent from 2021 onwards but without much success. The petitioner

thereafter was constrained to invoke the arbitration clause in the later part of 2021 and went before the Bombay High Court for appropriate orders. The Bombay High Court dismissed the petitioner's Section 11 application on 14th September, 2023. The reason for dismissal was that the Bombay High Court lacked jurisdiction to entertain the application.

The petitioner thereafter filed the present application for appointment of an Arbitrator in this Court in 2024 on the basis of a new notice invoking the arbitration clause under Section 21 of the 1996 Act on 18th October, 2023. The respondent did not reply to this invocation notice. The petitioner now prays for appointment of an Arbitrator.

The only objection taken on behalf of the respondent is that the petitioner cannot take the benefit of Section 14 of the Limitation Act, 1963 since the petitioner had an earlier invocation notice of 15th July, 2021. Counsel submits that the petitioner's second notice of 18th October, 2023 is hence barred by limitation. The other point raised is whether the three purchase orders can be clubbed together for a composite reference.

With regard to the first point, i.e., the point of limitation, it would be evident that the petitioner can take the benefit of the orders passed by the Supreme Court in the wake of the pandemic from 15th March, 2020 – 28th February, 2022, extending all periods of limitation. In any event, the reason for dismissal by the Bombay High Court is that the Bombay High Court was not the proper Court to entertain the matter. In any event, the question of limitation should be one which is ex-facie palpable and uncontroverted. In the

present case, the Court does not find the petitioner's claim to be barred by limitation. The question of composite reference will of course be decided by the Arbitrator.

The fact that there are indeed disputes between the parties would be evident from the petitioner's outstanding claim of about Rs.21 lakhs along with applicable interest. The respondent does not have a defence on merits on sitting over the petitioner's claim and doing nothing.

AP-COM/409/2024 is accordingly allowed and disposed of by appointing Mr. Dyutimoy Pal, counsel to act as the Arbitrator subject to the learned Arbitrator communicating his 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 2nd March, 2024 along with the requisite details of the contact person of the petitioner.

The parties will be at liberty to urge all points before the learned Arbitrator.

(MOUSHUMI BHATTACHARYA, J.)

sg.