

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/794/2024

PHOOLTAS TRANSRAIL LIMITED (FORMERLY KNOWN AS PHOOLTAS
HARSCO RAIL SOLUTIONS PVT. LTD.)

-VS-

PALFINGER CRANES INDIA PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : September 27, 2024.

Appearance:

Ms. Sanchari Chakraborty, Adv.

Mr. Sourajit Dasgupta, Adv.

Ms. Akanksha Chaoudhary, Adv.

...for the plaintiff

The Court: The plaintiff has filed the present suit praying for decree for a total sum of Rs.3,04,56,964/- along with interest at the rate of 17% per annum.

Counsel for the plaintiff has prayed for leave under Clause 12 of the Letters Patent, 1865 as well as Section 12A of the Commercial Courts Act, 2015.

Counsel for the plaintiff prays for leave under Section 12A of the Commercial Courts Act on the basis of the notice issued by the defendant dated 9th August, 2024 for initiation of arbitration proceeding as well as the proceeding initiated by the defendant under Section 9 of the Arbitration and Conciliation Act before the Madras High Court.

Counsel for the plaintiff has drawn the attention of this Court to the letters dated 3rd May, 2023 wherein it is recorded that "In the event of any failure on our part, you are at liberty to initiate proceedings under the

Negotiable Instruments Act, 1881 or in any other manner known to law. Further, all other issues/disputes arising out of this arrangement shall be referred to an Arbitration Tribunal whose jurisdiction will be in Chennai, Tamil Nadu by an arbitrator mutually agreed between the both of us.”

Counsel for the plaintiff submits that the plaintiff has filed the present suit for damages and as such letters dated 3rd May, 2023 are no way connected with the claim of the plaintiff and there is an urgency as the defendant has invoked provisions of Arbitration Act for which the plaintiff cannot claim its damages in the arbitration proceeding as in the contract there is no provision of Arbitration.

Considered the submission made by the counsel for the plaintiff.

It is the specific case of the plaintiff that the plaintiff has filed the present case only for the damages sustained by the plaintiff. In my view, if the plaintiff is claiming damages, it would be appropriate for the plaintiff to initiate pre-institution mediation process and as such this Court is not inclined to grant leave under Section 12A of the Commercial Courts Act, 2015.

Counsel for the plaintiff prays for withdrawal of the suit with liberty to take appropriate steps for initiation of pre-mediation process and if it is not settled in the Mediation, the plaintiff will file a fresh suit.

In view of the above, the plaintiff is granted leave to withdraw the suit with liberty to take appropriate steps for institution of pre-mediation process.

Accordingly, the suit is dismissed as withdrawn.

The department is directed to refund the Court fees, if deposited by the plaintiff in the present suit and the plaintiff will be at liberty to use the said Court fees, if any cause of action arises in future for filing the suit.

(KRISHNA RAO, J.)