

ORDER SHEET

AP-COM/372/2024  
[Old case no. AP/698/2023]

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

RMS POWER SOLUTIONS PRIVATE LIMITED  
VS  
UNION OF INDIA

BEFORE:  
The Hon'ble JUSTICE RAVI KRISHAN KAPUR  
Date : 21<sup>st</sup> May, 2024.

Appearance:  
*Mr. Aasish Choudhury, Adv.*  
*Ms. Uma Bagree, Adv.*  
*...for the petitioner*

*Mr. Sanajit Kumar Ghosh, Adv.*  
*Mr. S. Mazumder, Adv.*  
*...for the respondent*

The Court: This is an application under section 9 of the Arbitration and Conciliation Act, 1996. The disputes between the parties arise of a tender pertaining to supply of an underground armored unscreened Railway Signaling Cable (High Duty) with high conductivity copper conductor of Coil Core x 1.5 mm. (as per Specification No.IRS: S-63/2014/REV.4.0) for a total quantity of 823.67 Km.

Pursuant to the aforesaid tender, the petitioner was declared as the successful bidder and three different purchase orders were placed upon the

petitioner dated 31<sup>st</sup> August 2022, 25<sup>th</sup> January 2023 and 28<sup>th</sup> March 2022 respectively.

There have been diverse correspondence exchanged between the parties.

It is alleged on behalf of the respondent that there has been a gross failure on the part of the petitioner to make the aforesaid supplies in terms of their contractual obligations. It is further contended that though the respondents have paid the entire purchase consideration the petitioner has failed and refused to make the necessary supplies as contractually obliged to. This fact would also be evident from *inter-alia* the letters dated 20 March 2023, 8 May 2023, 19 June 2023, 28 Feb 2023 and 4 May 2023 respectively.

Despite repeated opportunities being granted and several extensions being afforded to the petitioner, it is alleged that the petitioner had failed to make the aforesaid supplies in terms of the purchase order. In such circumstances, the respondents were compelled to issue the impugned notices dated 28 July 2023, 8 July 2023 and 28 July 2023 *inter alia* seeking damages from the petitioner.

It is at this stage that the petitioner had approached this Court and had sought for interim reliefs in respect of the above impugned notices. By an ad interim order dated 27<sup>th</sup> September, 2023, a Coordinate Bench had as an ad interim measure restrained the respondent Railways from acting in terms and giving effect to any of the impugned notices.

The matter had appeared on earlier occasions when neither of the parties had brought it to the attention of this Court that there was a subsisting interim order in favour of the petitioner.

Upon an examination of the materials on record, it is evident that there is no case far less a strong prima facie case warranting any interference with the impugned notices. By each of the letters impugned in these proceedings, all that the respondents seeks to do is to claim damages and penalty in view of the alleged breach of contractual obligations of the petitioner. There is no other threat of any kind whatsoever. In such circumstances, the respondents cannot be restrained from exercising their contractual rights. The right to seek damages, penalty etc., is a purely contractual right and cannot be interfered with or thwarted at this stage of the proceeding in this manner. It is but obvious that the rival claims between the parties would ultimately be the subject matter of the arbitration proceedings. However, any kind of restraint on the impugned notices is premature and *ex facie* unwarranted and unjustified.

In such view of the matter, AP-COM/372/2024 stands dismissed.

There shall be no order as to costs. The interim orders stand vacated.

The parties are forthwith directed to take necessary and expeditious steps for appointment of an Arbitrator in terms of the agreement between the parties.

(RAVI KRISHAN KAPUR, J.)