

OCD-1

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

AP-COM/23/2023

RUPENDRA SINGH
VS
SIMPLEX INFRASTRUCTURE LTD

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : January 2, 2024.

Appearance:

Mr. Ratul Das, Adv.

Mr. Shoham Sanyal, Adv.

Mr. Sumit Biswas, Adv.

Mr. Rajashree Bhowmick, Adv.

...for the petitioner

Mr. Snehashis Sen, Adv.

...for the respondent

The Court: The petitioner seeks appointment of an Arbitrator under Section 11 of the 1996 Act. The arbitration clauses are contained in two work orders issued by the respondent on the petitioner with regard to balance works of a plant and civil works package for a thermal power plant at Meja, Allahabad.

The claim arises out of unpaid bills pertaining to the invoices raised by the petitioner and issued to the respondent for the work done in terms of supply of the equipments mentioned in the work orders and for lease rentals for these equipments. The petitioner's case is that the respondent was due to pay Rs.75,000/- per month for the excavators and Rs.48,000/- per month for

the tipper trucks. The respondent made part payments but not the full amount. The petitioner's claim at present is approximately Rs.18 lakhs.

Learned counsel appearing for the respondent takes a point of jurisdiction relying on Clause 18 of the work orders which provides that all transactions are subject to jurisdiction of the Allahabad Court. Counsel also submits that the two work orders are un-related and cannot be clubbed into one reference. Counsel relies on decisions on the point of jurisdiction, first.

Clause 18 of the work orders stipulates that all transactions are subject to jurisdiction of the Allahabad Court. The respondent relies on this clause. Clause 17, however, clearly states that the "venue" of the arbitration shall be in Kolkata. The seat-venue conundrum has been considered in several cases of the Supreme Court and High Courts and the consensus now is that the designation of either the venue or the seat would settle in favour of the designated place and further that seat and venue can interchangeably be used where only one has been mentioned. In this case, the venue being in Kolkata amounts to designation of seat also to be in Kolkata. Therefore, the issue of jurisdiction is in favour of the petitioner. The petitioner has rightly approached the Calcutta High Court in terms of Clause 17 of the work orders

With reference to the objection on the consolidated reference, this Court is also in favour of the petitioner since both the work orders mention the identical project namely, "Balance works of main plant and offsite civil works package for Meja Thermal Power Project". The mega wattage mentioned in the work orders is also identical. There is hence no doubt that the supply of equipments by the petitioner to the respondent was for the thermal power

project at Meja, Allahabad. There is hence no difficulty in a consolidated reference.

The petitioner invoked the arbitration clauses in the work orders by its notice dated 24th June, 2023 invoking the arbitration clauses. The respondent remains silent thereafter. The petitioner hence has established a case under Section 11(5) as well as (6) of the 1996 Act.

AP-COM/23/2023 is accordingly allowed and disposed of by appointing Mr. Sourodeep Banerjee, 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 5th January, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)