

OD-6

ORDER SHEET

AP/844/2022

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

ROHITASH KUMAR KOTHARI
VS
SIMPLEX INFRASTRUCTURE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 4th January, 2024.

Appearance:

Mr. Ratul Das, Adv.

Mr. Sumit Biswas, Adv.

Ms. Rajashree Bhowmick, Adv.

...for the petitioner

Mr. Snehashis Sen, Adv.

Mr. Danyal Ahmed, Adv.

...for the respondent

The Court: The dispute between the parties relates to unpaid invoices of the petitioner with reference to the work performed by the petitioner in respect of three purchase orders issued by the respondent from 18th December, 2017 to 24th September, 2018.

The petitioner was to construct flyover/expressway corridor for the Jammu Kashmir Economic Reconstruction Agency. The petitioner's claims have been tabulated in paragraph 8 of the petition and are six in number. The claims are given in respect of particular invoice numbers. The petitioner was unable to convince the respondent to make payment for the work done by the

petitioner in respect of the three purchase orders and was ultimately constrained to invoke the arbitration clauses in the three purchase orders on 11th July, 2022 referring however only to one purchase order. The respondent did not reply to this notice.

Learned counsel appearing for the respondent argues that the purchase orders are unrelated insofar as one of the total of four purchase orders relates to construction work in Telangana. Counsel also submits that the Section 21 notice mentions only one purchase order instead of three.

After considering the submissions made on behalf of the parties, there is little doubt that all the three purchase orders placed before the Court relate to construction works for the same highway in Srinagar. Learned counsel appearing for the petitioner gives up the claim in relation to the purchase order of the construction work done in Telangana.

Whether the notice of invocation mentions one or three purchase orders is of little relevance where the respondent admittedly is in default of its statutory obligations with regard to payment to the petitioner for the work done in respect of the construction works in Srinagar. The decisions given by the Supreme Court as well as the High Courts provide for a consolidated reference and this Court sees no reason for disallowing the application on technical grounds.

The petitioner's claim amounts to approximately Rs.30.96 lakhs on account of unpaid dues. The disputes between the parties are directly relatable to the arbitration clauses contained in the three purchase orders.

AP/844/2022 is accordingly allowed and disposed of by appointing Mr. D.N. Sharma, 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 6th January, 2024 along with the requisite details of the contact person of the petitioner.

The point of limitation will be kept open for being decided in the arbitration.

Liberty to the petitioner to invoke the arbitration clause in respect of the remaining purchase order.

(MOUSHUMI BHATTACHARYA, J.)