

OC-9

AP-COM/404/2024  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMMERCIAL DIVISION

M/S SPS STEELS ROLLING MILLS LIMITED  
VS  
SANKAR SANTRA

BEFORE:  
The Hon'ble JUSTICE SHAMPA SARKAR  
Date : 7<sup>th</sup> April, 2025.

Appearance:  
*Mr. Debraj Sahu, Adv.*  
*. . .for the petitioner.*

The Court: Paper publication has been effected as per the order dated March 3, 2025 in two widely circulated dailies i.e. The Economic Times and Ei Samay.

Despite such substituted service, none appears on behalf of the respondent.

Under such circumstances, the matter is taken up in the absence of the respondent.

The petitioner supplied TMT bars to one Panchanan Santra, the original proprietor of M/s. Sarbani Enterprise. Allegedly, payments in full and final settlement of the invoices raised by the petitioner have not been made. Panchanan Santra died. His son took over the business as the sole proprietor of Sarbani Enterprise. Petitioner informed the respondent (son of Panchanan Santra) that a sum of Rs.21,27,924/- was due and payable as on July 14, 2021.

In reply to the said letter, the respondent by letter dated July 20, 2021 requested for some time to liquidate the dues. The petitioner contends that some business activities were also undertaken by the parties, amongst themselves. Allegedly, by a supplementary memorandum of understanding dated April 11, 2022, the parties agreed that a further sum would be payable to the tune of Rs.15,87,924/- . The said memorandum of understanding contains an arbitration clause. The seat of arbitration has been mentioned as Kolkata or any other place as the Arbitrator decides. The High Court at Calcutta was agreed to have exclusive jurisdiction in the matter.

The petitioner seeks enforcement of the arbitration clause contained in the said memorandum of understanding, on the ground that the payments were still due and the terms of the memorandum of understanding had not been adhered to.

Moreover, a cheque which was issued for Rs.19,51,066/- was returned by the bank, with the endorsement, “no advice received.”

Under such circumstances, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued to the respondent. The respondent received the same. Despite such receipt, the respondent did not react to the notice dated June 5, 2023.

Admittedly, the memorandum of understanding dated April 11, 2022 which has been captioned as “Memorandum of Understanding Supplementary” contains an arbitration clause. There appears to be a live dispute. In any event, the referral court is only required to ascertain whether there is an existing arbitration clause or not. Apart from such, prima facie, evidence of an arbitration clause,

the other issues with regard to jurisdiction of the Arbitrator to decide the claim of the petitioner, arbitrability of the issues and admissibility of the claims, including the point of limitation etc. are to be decided in the arbitral proceeding. Keeping all the above issues open for the learned Arbitrator to take a decision if raised by the respondents, the application is disposed of by appointing Mr. Shayak Mitra (mobile 7439503011) to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration as per the provisions of the Arbitration and Conciliation Act.

AP COM/404/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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