

OCD 1

ORDER SHEET
AO-COM/10/2025
IA NO: GA-COM/1/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

ORISSA STEEL EXPRESSWAY PVT LTD
VS
PRATHYUSHA AMR JV

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 25th June, 2025.

Appearance:
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Samriddha Sen, Adv.
Ms. Iram Hassan, Adv.
. . .for the petitioner.

Mr. Ranjan Bachawat, Sr. Adv.
Mr. Sourojit Dasgupta, Adv.
Mr. Shourojyo Mukherjee, Adv.
Mr. Vishwarup Acharyya, Adv.
. . .for the respondent.

The Court:

1. By an order dated April 22, 2025, this Court had refused the prayer for stay of the order dated December 12, 2024, passed by the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act).
2. The application for stay was disposed of and the appeal was kept pending. By the order impugned, the learned Arbitrator had directed the petitioner to deposit a sum of Rs.76.32 crores in its own name in a short term fixed deposit/term deposit account, in a nationalized bank,

after realization/withdrawal of the award deposited with the Delhi High Court by the National Highway Authority of India [NHAI], in terms of an award passed in an arbitral proceeding between the petitioner and NHAI.

3. Mr. Chowdhury, learned senior advocate had assailed the order on various grounds. Those grounds have been enumerated in paragraph 3 of the order dated April 22, 2025, which are set out hereunder for convenience:-

“(a) Un-liquidated claim for damages cannot be secured and the order passed by the learned arbitrator amounted to an order of attachment.

(b) Payments of the bills and invoices raised by the respondent were made. The remaining claim of Rs.76.32 crores was only in the form of damages and unless a breach was proved, the claim for damages was illusive and imaginary. The quantification of the sum was made without any basis.

(c) The respondent would have to prove that it had sustained loss on account of some breach committed by the petitioner before the learned arbitrator could secure the amount.

(d) The learned arbitrator erred in holding that only because the petitioner had asked the respondent to submit its claim against the petitioner, which the petitioner proposed to pass through in the arbitral proceeding between the petitioner and NHAI, the

same was an admission of the dues payable by the petitioner to the respondent.

(e) The finding of admission was contrary to the settled principles of law with regard to claims for damages and the learned arbitrator had also made up his mind with regard to the liability of the petitioner to pay money to the claimant even before the arbitration proceeding had been concluded.

(f) The learned arbitrator was proceeding with a closed mind and the petitioner apprehends that the issues which have been raised by the petitioner with regard to admissibility of the claims of the respondent will not be adjudicated in the proper manner.”

4. Mr. Chowdhury relied on various decisions of the Hon'ble Apex Court and also of this Court in support of the contention that claim for unliquidated damages could not be secured by an interim order of attachment before judgment and/or by an order of injunction, unless the alleged breach was proved in the arbitral proceedings. Mr. Chowdhury contended that the finding of the Arbitrator that the amount was “admittedly due” was erroneous and based on surmise and conjecture. The learned Arbitrator had made up his mind.
5. Mr. Bachawat opposed the stay application and submitted that the petitioner had admittedly awarded a substantial sum in an arbitral proceeding between the petitioner and NHAI. The sum was deposited in the Delhi High Court. The petitioner had asked the respondent to

inform the petitioner about its claim against the petitioner. The petitioner included the said amount in the statement of claim filed in the arbitral proceeding with the NHAI, as a pass through claim. Thus, the money payable to the respondent could no longer be unliquidated claim for damages. Had the claim been allowed, the debt would crystallize.

6. It was apprehended that, the petitioner, which was a joint venture and a special purpose vehicle would stand dissolved as soon as the proceeding with the NHAI was over. It was an accepted position that the petitioner and NHAI had settled all their disputes. The respondent would not have any other way of securing the said amount, if the money was paid and the petitioner was dissolved.
7. Upon hearing the learned advocates for the respective parties, this Court was of the view that the learned Arbitrator had passed the order, requiring the petitioner to secure the sum of Rs.76.32 crores, in the event the petitioner withdrew the money from the Delhi High Court or the NHAI paid the awarded sum to the petitioner.
8. It is Mr. Chowdhury's specific instruction that the money has not yet been received by the petitioner. Thus, there is no question of investing the same. This Court finds that at this stage, the petitioner cannot be aggrieved by the order. It is also informed that the arbitral proceedings are near conclusion. This court does not find any illegality in the order of the learned arbitrator.

9. Under such circumstances, the appeal is disposed of with a request to the learned Arbitrator to conclude the proceedings expeditiously.
10. However, as one of the issues before the learned Arbitrator is with regard to the admissibility of the claim of the petitioner, the observations made by the learned Arbitrator in the order impugned, shall be tentative and prima facie. Such observation shall not influence the learned Arbitrator in deciding the dispute finally.
11. In my opinion, the findings of the learned Arbitrator were reasons assigned, prima facie, to justify such order.
12. The Court has complete faith that the learned Arbitrator will decide the dispute independently on the basis of the records and the submissions made by the parties, without being influenced by the interim order that was passed.
13. AO-COM 10 of 2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

Sp/