

ORDER

OC-22

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/155/2025

GANNON DUNKERLEY & CO LIMITED
VERSUS
PUBLIC HEALTH & ENGINEERING DEPARTMENT, GOVERNMENT OF WEST
BENGAL

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 3rd March, 2025.

Appearance:

Ms. Sweta Ganghi, Adv.
... for the petitioner.

Mr. Paritosh Sinha, Adv.
Mr. Arindam Mondal, Adv.
Ms. Swagata Ghosh, Adv.
. . . for the respondent.

1. This is an application for appointment of a learned Arbitrator.
2. The petitioner is an Infrastructure Development Company and is engaged in various public sector projects. One such project was also undertaken for the respondent. The petitioner was a successful bidder and letters of acceptance were issued. The contract was executed on February 5, 2013. The petitioner furnished performance guarantees. The performance guarantees were kept valid upto June 28, 2018. The plant was under operation and maintenance of the petitioner since January, 2017 and the

petitioner contends that the respondent did not point out any defect or fault when the plant was under the petitioner.

3. On June 22, 2018 the respondent demanded further extension of the validity of the bank guarantee as a pre-condition to make payments to the petitioner.
4. The petitioner's contention is that the work was completed some time in September 30, 2020. The trial run was completed on December 31, 2016 and the default liability clause was for a period of 365 days between January 1, 2017 and December 31, 2017. After the completion certificate was issued, the bills could not be withheld. It is specifically averred that the petitioner is entitled to payment in terms of the bills raised.
5. Prima facie, it appears that the dispute is alive. The said contract contains a dispute resolution clause under Clause 24.1. There is an in-house mechanism for settlement of disputes and if the disputes cannot be resolved by the Engineer-in-charge, the same shall be referred to an Adjudicator. Clause 25 provides the procedure to be followed by the Adjudicator. Clause 25.2 deals with reference of dispute to arbitration, if the Adjudicator does not come to a decision within 28 days or cannot resolve the dispute. In the instant case, it appears that the in-house mechanism failed. Accordingly, the petitioner invoked the arbitration clause.

6. Mr. Sinha does not dispute the existence of the arbitration clause, but raises serious objection with regard to the claim, the arbitrability of those disputes, including the point of limitation.
7. This Court is of the view that the issues which have been raised by Mr. Sinha, can be raised before the learned Arbitrator. Limitation is also a mixed question in this case. All the objection of the respondent shall be decided by the learned Arbitrator, independently.
8. The application is disposed of by appointing Mr. Anuj Singh, learned Advocate (M No.9830202752) of this Court as learned Arbitrator, to arbitrate upon the disputes between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
9. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.
10. AP-COM/155/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)