

ORDER

OCD-8

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/161/2025
M/S. SAMBHAV ENTERPRISES
VS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th March 2025.

Appearance:

Mr. Pratip Mukherjee, Advocate
Mr. Arpit Agarwal, Advocate
Mr. Yashashwi Sundariya, Advocate
Mr. Purnankar Biswas, Advocate
...for petitioner.

Mr. Ratul Das, Advocate
Mr. Roshan Sengupta, Advocate
...for respondents.

1. This is an application for appointment of a learned arbitrator in terms of the arbitration clause contained in the work order dated February 27, 2016. The parties entered into a business relationship. The respondent was engaged as a contractor, by Bhilai Steel Plant. The respondent engaged the petitioner as a sub-contractor to undertake certain works with regard to installation of false ceilings, aluminum doors and windows, flooring and other associated tasks at Bhilai Steel Plant. Disputes and differences arose over payment of the money, on the basis of the invoices, raised by the petitioner. The petitioner's case is that 49 invoices covering the period between February 29, 2016 and October 5, 2023 had been

raised in respect of the works executed. The petitioner offered 30 days credit period, which was later extended to 60 days on the basis of the respondent's requests. According to the petitioner, the total amount payable against the 49 invoices was Rs.2,27,54,990/-. Part payments were allegedly made and, according to the petitioner, Rs.26,12,433/- was the balance outstanding. Apart from the said amount, the security deposit and interests etc. were also payable, according to the petitioner. The total amount due, as on 26th August 2024, was Rs.51,40,398/-. As the demand notice was not responded to, the petitioner invoked arbitration. The arbitration clause is contained in Clause 24 of the work order, which is quoted below:-

24) In the event of any difference or dispute arising out of or in connection with this work order, the same shall be first amicably settled by mutual dialogue. If the parties fail to settle their difference or dispute arising out of or in connection with this work order (including interpretation of the terms thereof), the same shall be referred to arbitration. The Arbitration proceedings shall be conducted by a single Arbitrator appointed by the Company Secretary of Simplex Infrastructures Limited, and the award/decision of such arbitrator shall be final and binding upon both the parties. The venue of the arbitration shall be Kolkata. However, the work shall not be stopped during the pendency of the proceedings and it shall be ensured that such work is proceeded uninterruptedly.”

2. The venue of the arbitration, according to the said clause, is Kolkata.

3. Mr. Das, learned advocate for the respondent submits that before invocation of the arbitration clause, the petitioner ought to have tried to settle the dispute amicably. Without exhausting the alternative redressal mechanism i.e., amicable settlement, the arbitration clause could not be invoked. Thus, the application before this Court is premature. The next contention is that the claims were not only time barred, but also inadmissible. It is denied that part payments on the basis of the invoices, had been made within the period of limitation. The applicability of Section 18 of the Limitation Act, in the computation of the period of limitation, is denied.
1. Mr. Das's contention that the application is premature and that the petitioner should be asked to explore the possibility of an amicable settlement, is not accepted. The fact that correspondence had been made by the petitioner for payment of the dues, is available from record. In my opinion, relegating the petitioner to another round of meetings and discussions, would be an exercise in futility and will only cause further wastage of valuable time. Reference is made to the decision of **Visa International Ltd. v. Continental Resources (USA) Ltd.**, reported in **(2009) 2 SCC 55**. The Hon'ble Apex Court held that if the referral Court finds from the records that despite the parties communicating with each other, the dispute continued, relegating the parties to the process of conciliation and/or amicable settlement would be an empty formality. The relevant portion is quoted below:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

4. The existence of the arbitration clause is not in dispute. The fact that the parties were in a business relationship, is available from the documents on record. The fact that composite payments were made by the respondent against the tax invoices raised by the petitioner, is also available from records. Part payment was made sometime in April 2023. The last invoice raised by the petitioner, is dated October 5, 2023.
5. Thus, the issue of limitation, in my view, is a mixed question and has to be decided by the learned arbitrator upon weighing the evidence to be adduced by the parties. With regard to the admissibility of the dues, the learned Arbitrator shall decide the matter.

6. Under such circumstances, the application is disposed of without going into the merits of the rival claims of the parties.
7. Accordingly, the Court appoints Ms. Suchishmita Ghosh Chatterjee, learned Advocate (Mob. No.7980857275), Bar Library Club as the learned Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix her own remuneration as per the Schedule of the Act.
8. AP-COM/161/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)