

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

Present:-

Hon'ble Justice Shampa Sarkar

**AP-COM 169 OF 2025
RAKESH KUMAR CHAUDHARY
VS**

STEEL AUTHORITY OF INDIA AND ANR.

For the petitioner	: Mr. Soumik Chakraborty, Adv. Mr. Ratul Das, Adv. Mr. Sitikantha Mitra, Adv.
For the respondents	: Mr. Lakshmi Kumar Gupta, Sr. Adv. Mr. Lakshmi Kanta Pal, Adv.
Hearing concluded on	: 10.06.2025
Judgment on	: 30.06.2025

SHAMPA SARKAR J.

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1966 (hereinafter referred to as the said act), seeking appointment of an arbitrator for settlement of disputes between the parties, arising out of the agreement dated June 29, 2010. The petitioner prays for appointment of an arbitrator.

2. The petitioner's case was that, the respondent No.2 issued a notice inviting tender. The petitioner participated. By a Letter of Acceptance dated May 21, 2010, the respondent accepted the petitioner's bid. The bid was filed in response to the notice inviting tender floated by the respondent No. 2, dated August 24, 2009. Thereafter, the parties entered into a contract on

June 29, 2010. The same was signed by the parties and the consultant M/s MECON Ltd. The contract was awarded for the purpose of “Structural Work of New Slag Yard of SMS” at Durgapur Steel Plant. The initial contract price was Rs. 5,65,26,645. The project was required to be completed within 20 months from the date of signing of the contract. The petitioner claimed to have completed the work within the extended time and at the request of the respondents.

3. According to the petitioner, resources were mobilized in respect of manpower, machinery, generators, truck etc. The respondent failed to hand over the proposed site. The entire area was covered under various running operational projects of the respondents. Most of the work was suspended. Thus, the resources which were deployed at the site remained idle. The petitioner also alleged breach of the terms and conditions of the contract and made the respondent solely liable for the delay in timely execution.

4. The petitioner alleged to have incurred huge losses on various grounds. Thereafter, on July 20, 2013, the contract value was amended to Rs. 8,61,93,499. The petitioner did not accept the unilateral amendment and requested incorporation of the rates as per the petitioner’s opinion. A writ petition was filed before this Hon’ble Court with a prayer for release of legitimate dues. The writ petition was disposed of by an order dated March 02, 2015, with liberty to the petitioner to approach the authorities for settlement of the dispute, by appointing an arbitrator. Allegedly, the petitioner moved the MSME Council which was subsequently withdrawn. The work was completed sometime in September, 2016 and the project was commissioned on September 16, 2016. The petitioner submitted the R.A.

bills and prayed for release of payment of Rs. 28,92,71,763. By a letter dated January 7, 2017, the petitioner submitted a final bill amounting to Rs. 21,34,58,606. The respondent did not pay.

5. The petitioner contended that, by a letter dated November 19, 2019, the respondents agreed to settle the claim at Rs. 1,44,52,080, and denied the claim of the petitioner. The petitioner found the said figure to be arbitrary and fanciful. The petitioner replied to the said letter by reiterating its claims and prayed for mutual settlement. The respondents refused to entertain the claim of the petitioner and asked the petitioner to take recourse to the dispute resolution clause, by a letter dated February 18, 2020. In furtherance to such letter, the petitioner invoked the arbitration clause by a letter dated December 24, 2020. As per Clause 46 of the General Condition of Contract, a request was made for appointment of an arbitrator to adjudicate the dispute between the parties. Instead of appointing an arbitrator and referring the dispute, the respondent kept silent. By a letter dated January 20, 2023, the petitioner again asked for amicable settlement. By a letter dated March 3, 2023, the respondent rejected all the claims of the petitioners and specifically stated that the case could not be treated as closed. Thus, it was the specific contention of the petitioner that the respondents had failed and neglected to resolve the dispute amicably. Thereafter, the respondents, out of their own accord by a letter dated March 4, 2024, amended the contract and increased the contract value to Rs. 11,94,58,249. This was not acceptable to the petitioner. On March 26, 2024, the respondent transferred an ad-hoc amount of Rs. 5,66,60,310.46 to the bank account of the petitioner, which

according to the petitioner, was an ad-hoc payment and not full and final settlement. The petitioner alleged that some blank papers were signed by the petitioner under force and coercion, for which the petitioner was constrained to file a formal complaint before the Deputy Commissioner of Police (East) Asansol Durgapur. As the dispute continued and the respondent failed and neglected to pay the final bill, the petitioner filed this application for appointment of a learned arbitrator, under Clause 46 of the General Conditions of Contract.

6. Mr. Das, learned Advocate for the petitioner, submitted that the application was well within time. The claim was subsisting and not barred by limitation. The dispute was alive. After the final bill was raised, the first refusal came on November 19, 2019. The notice invoking arbitration was issued on December 24, 2020. By a letter dated March 4, 2024, the petitioner was informed about the amendment of the contract value. In view of the decision of the Hon'ble Supreme Court, the period of limitation in filing this application should be computed from March 31, 2022, that is, after expiry of 30 days from the receipt of the notice and upon excluding the time between March 15, 2020 to February 28, 2022. This application was filed on February 27, 2025. Before that, an application was filed in the Delhi High Court for appointment of an Arbitrator, which was dismissed as withdrawn, with liberty to move the appropriate forum.

7. It was further submitted that the petitioner was also entitled to the exclusion of the period when the application was pending before the Delhi High Court. According to Mr. Das, by a letter dated March 3, 2023, the respondent recommended amicable settlement. The respondents also made

an ad-hoc payment on March 26, 2024. Mr. Das prayed for reference of the dispute to arbitration, with a further contention that the Memorandum of payment was issued under force and coercion.

8. Mr. Gupta, learned senior advocate for the respondents, submitted that this Court did not have the jurisdiction to entertain the application. Mr. Gupta further submitted that, even assuming that the issue of limitation in this case was a mixed question of law and fact, the jurisdiction of this Court had been ousted by Clause 46.2.5 of the general terms and conditions, which provided that the venue shall be New Delhi. The contract value was above Rs. 5 Crores. The rules of the Indian Council of Arbitration (ICA)/ Scope forum of Conciliation and Arbitration (SCFA), as agreed by the parties, would be applicable. Thus, under no circumstances, the application should be entertained by this court. Mr. Gupta further relied on Clause 46.2.4, and submitted that the exclusive jurisdiction clause would not be applicable in view of Clause 46.2.5. Clause 46.2.5 would supersede Clause 46.2.4. The expression “unless otherwise mentioned” in the opening sentence of Clause 46.2.4 clarified such position. Clause 46.2.5 mentioned the venue to be New Delhi. Clause 46.2.4 would not come into operation, in view of the venue being agreed as New Delhi. Mr. Gupta prayed for dismissal of the application. On the facts, Mr. Gupta submitted that the claim of the petitioner was inadmissible. There was no arbitrable dispute. The respondents had paid up all the dues. The petitioner could not raise any further dispute by filing this frivolous application and dragging the respondents to an unnecessarily expensive adjudicatory process.

9. Heard the learned advocates for the respective parties. With regard to the issue of limitation, this court, upon a prima facie, assessment of the sequence of events indicated above holds that the dispute is alive. The facts as narrated, would indicate that the petitioner's claim cannot be treated as "dead wood". Here, limitation is a mixed question of law and fact. However, the questions arise as to whether this Court has the jurisdiction to refer the dispute and whether the application is pre mature. Further, whether Clause 46.2.5 will oust the jurisdiction of this Court by having an overriding effect over clause 46.2.4, also falls for consideration. For convenience, the Arbitration clause is quoted below:-

46.2 Arbitration

46.2.1 Conciliation shall be resorted to prior to invoking Arbitration. The applicable rules for Conciliation proceedings shall be that of "SCOPE forum of Conciliation and Arbitration" (SCFA). The Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings to amicably settle the disputes.

46.2.2 The arbitration shall be governed in accordance with The Arbitration and Conciliation Act 1996 (hereinafter referred to as the "Act") of India. The language of Arbitration shall be English.

46.2.3 Subject to the stipulations made hereinabove, Arbitration shall be conducted as per forum specified below:

All Contracts, whose value is Indian Rs 5 Crores (for both Indian and Foreign Contractors) and below, shall go for Adhoc Arbitration, where an impartial Arbitrator would be appointed by the Managing Director of Durgapur Steel Plant, and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act of 1996 of India.

46.2.4 Unless otherwise mentioned, the Arbitration shall be held at SAIL- DSP, Durgapur. The court of Durgapur India (with exclusion of all other courts) shall have exclusive jurisdiction over all matter of dispute.

46.2.5 Arbitration of contracts, with Indian parties, where contract value is more than Indian Rs. 5 Crores and the contracts with foreign parties for value of more than Indian Rs. 5 Crores and up to Indian Rs. 20 Crores shall be governed by the Rules of Indian Council of Arbitration (ICA/"SCOPE Forum of Conciliation and Arbitration" (SCFA) as agreed by the party. The venue shall be New Delhi.

46.2.6 Arbitration with foreign contractor, if any or in Consortium contracts (including foreign contractor), where the contract value is

more than Indian Rs. 20 crores shall be governed by the Rules of Arbitration of International Chamber of Commerce (ICC), Paris. The venue of the arbitral proceedings shall be New Delhi.

46.2.7 During the pendency of the Conciliation or Arbitration proceedings both the parties (i.e. the Contractor and the Employer) shall continue to perform their contractual obligations. The arbitral tribunal shall give reasons for its award. The tribunal shall apportion the cost of arbitration between the parties, the award rendered in any arbitration hereunder shall be final and binding upon the parties. the parties agree that neither party shall have any right to commence or maintain any suit or legal proceeding concerning any dispute under this agreement until the dispute has been determined in accordance with the arbitration proceeding provided for herein and then only to enforce or facilitate the execution of an award rendered in such arbitration.

46.2.8 Arbitration between a Central Public Sector Undertaking of the Government of India (not under the Ministry of Steel) and the Employer shall be as per the guidelines of Ministry of Heavy Industries and Public Enterprises, Government of India.

Arbitration between a Central Public Sector Undertaking of the Government of India under the Ministry of Steel, Government of India and the Employer, shall be as per the guidelines of the Ministry of Steel.”

10. Clause 46.2.1 deals with settlement of dispute by conciliation. The Court finds that numerous correspondences had been exchanged between the parties. Meetings had been held and the respondents also amended the contract value, twice. The respondents paid a portion of the claim of the petitioner as full and final settlement and denied the veracity of the balance claim. A memorandum of payment was signed, which the petitioner claims to have been done. There are allegations against the respondents of having forced the petitioner to sign blank papers and the petitioner complained to the police authorities. Thus, this Court is of the view that further direction for amicable settlement by relegating the parties to explore the possibility of conciliation, will be an empty formality. In my opinion, amicable settlement by a conciliation process, is an impossibility. Reference is made to the

decision of ***Visa International Limited vs. Continental Resources (USA) Limited*** reported in **(2009) 2 SCC 55** and ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited*** reported in **(2015) 13 SCC 610**.

11. ***Visa International (supra)*** is referred to. The relevant paragraph 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.”

12. ***Demerara Distilleries (supra)*** is referred to. The relevant paragraph is quoted below:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present

proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked.”

13. Clause 46.2.2 provides that arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996. The language shall be in English. This is a separate clause which was agreed to by the parties. Clause 46.2.3 provides that arbitration should be conducted as per the forum specified after the said clause. All contracts whose value in Indian Rupee was 5 crores and below, would be referred to the ad-hoc arbitration and an impartial arbitrator would be appointed by the managing director of Durgapur Steel Plant. The arbitration proceedings would be governed by the Arbitration and Conciliation Act, 1996. This Clause is not relevant for the purpose of determination of the issue in this case as admittedly, the contract value is above Rs. 5 crores.

14. Clause 46.2.4 provides that unless otherwise mentioned in the contract, the arbitration shall be held at SAIL DSP Durgapur, The Courts of Durgapur, India (with the exclusion of all the courts), shall have exclusive jurisdiction over all matters of disputes. This is an independent clause, which provides that the arbitration shall be held at DSP, Durgapur and the seat had been agreed by the parties to be at Durgapur. The overall

jurisdiction governing clause also conferred exclusive jurisdiction to the Courts at Durgapur.

15. Clause 46.2.5 provides that all arbitrations arising out of the contract, where the contract value was more than Rs. 5 crores, shall be governed by the Rules of Indian Council of Arbitration (ICA)/ Scope forum of Conciliation and Arbitration (SCFA) as agreed by the parties. The venue shall be New Delhi. In my view, this clause would have been applicable, had the parties agreed either to follow the ICA Rules or the Rules of SCFA. There is no such agreement amongst the parties with regard to implementation of Clause 46.2.5. Neither has the respondents taken a stand in their communications that the parties had agreed that either of the rules would be followed. The choice was between SCFA or ICA. New Delhi, as the venue, would be applicable in the event the parties had chosen either ICA or SCFA Rules. In the absence of seat, venue may be read as seat. Here, New Delhi as the venue has been incorporated in Clause 46.2.5, which means that if the parties agreed to either follow SCFA Rules or ICA Rules, in such event the venue for such arbitration would be New Delhi. However, Clause 46.2.4 is an independent clause. It mentions the seat. The clause provides that the arbitration shall be held at SAIL DSP, Durgapur and the Courts of Durgapur would have exclusive jurisdiction. When seat is mentioned, the said clause shall prevail.

16. Under such circumstances, Mr. Gupta's contention that Clause 46.2.4 would not be applicable as New Delhi was chosen to be the venue, is not accepted. The venue selection is specific to Clause 46.2.5. In my opinion Clause 46.2.5 is not applicable, as the parties did not select either ICA or

SCFA. They had an option to select either. The respondents has also not chosen any of the forum/rules, for institutionalized arbitration. The mechanism provided under Clause 46.2.5 had failed. Clause 46.2.2 provides that arbitration shall be governed by the provisions of the said Act. Under such circumstances the provisions of Section 11 will apply. In view of the fact that seat had been decided as Durgapur and in the view of the fact that Courts at Durgapur were selected to have exclusive jurisdiction, this Court can entertain this application as the referral court.

17. The referral Court is not required to hold a mini trial in order to come to a specific finding on arbitrability and/or admissibility of the claim. The respondent can also raise a question with regard to the jurisdiction of the learned Arbitrator. Party autonomy is the spirit of arbitration. The parties themselves had framed the above clauses. The clause must be harmoniously construed. Learned Arbitrator has the power to rule on his own jurisdiction. All objections raised by Mr. Gupta, can be decided by the learned Arbitrator.

18. In the affidavit in reply filed by the respondents in arbitration petition no. 1523 of 2024, which was pending for appointment of a Learned Arbitrator before the High Court at New Delhi, specific contentions of the respondents were that the seat of arbitration was Durgapur and the cause of action arose at Durgapur. The High Court at Delhi lacked the territorial jurisdiction, to appoint an arbitrator and the arbitration petition should have been filed before the High Court at Calcutta and not before the High Court at Delhi. The relevant portions of the said reply are quoted below for reference:-

"2. At the outset, the Respondent denies each and every averment, allegation and submission made by the petitioner in the present petition to the extent the same may be contrary to records and, as such, nothing contained in the present petition may be deemed to be admitted by the Answering Respondent unless specifically admitted hereinafter. Further, the Respondent reserves its right to make detailed submission on merit of the matter during the arbitration proceedings, in case arbitration proceedings commence.

PRELIMINARY SUBMISSIONS/OBJECTIONS:

3. The Respondent submits that the present petition is liable to be dismissed as this Hon'ble Court lacks territorial jurisdiction under Section 11 to appoint an Arbitrator, and the Arbitration Petition could have been filed only before the Hon'ble Calcutta High Court and not the Hon'ble Delhi High Court, as submitted hereunder: -

a) The contract was signed and executed at Durgapur Steel Plant, Durgapur; addresses of both parties for all contractual purposes were specified at Durgapur vide Clauses A. 1.0 to 4.0 in Special Conditions of Contract (SCC) at Pages 63 to 64 in Annexure P-1 of the above Petition, all the contractual obligations of both parties were performed at Durgapur, and all the facts and circumstances pleaded by the Petitioner in support of its alleged claims and cause of arbitration occurred at Durgapur. As such, cause of action for arbitration could accrue only at Durgapur prior to the invocation of arbitration.

b) Further, Clause 46.2,4 of the General Conditions of Contract (GCC) forming part of the contractual terms and conditions explicitly provides for the exclusive jurisdiction of the courts at Durgapur. While the venue of arbitration is specified as New Delhi in respect of institutional arbitration before Indian Council of Arbitration or SCOPE Forum under Cl. 46.2.5 of GCC, the seat of arbitration remains at Durgapur.

Consequently, the Arbitration Petition should have been filed before the Hon'ble Calcutta High Court and not the Hon'ble Delhi High Court. The Relevant Clause 46.2.4 of General Conditions of Contract (GCC) forming part of the contract agreement dated 29.06.2010 (Document P-1 annexed to the Petition) is reproduced below:

"Unless, otherwise mentioned, the Arbitration shall be held at SAIL-DSP, Durgapur. The court of Durgapur India (with exclusion of all other courts) shall have exclusive jurisdiction over all matter of dispute".

c) Moreover, as admitted by the Petitioner in Para 16 of the Petition, and as evident from the order dated 02.03.2015 (Document P-3 annexed to the Petition) passed by Hon 'ble High Court at Calcutta, the Petitioner had previously filed Writ Petition No. (W) 34279 of 2014 before the Hon'ble High Court at Calcutta, seeking the release of dues along with interest and for the settlement of disputes and praying for appointment of Arbitrator, and the said Writ Petition was

disposed of by the Hon'ble High Court at Calcutta vide the said order dated 02.03.2015. Thus, the Petitioner had earlier acknowledged the territorial jurisdiction of the Hon'ble High Court at Calcutta for appointment of Arbitral Tribunal, and the present petition for appointment of Arbitrator in continuation of the prayer of the Petitioner in the earlier Writ Petition would also lie before Hon'ble Calcutta High Court."

19. The above pleadings clearly indicate how the respondents understood clause 46.2.4. The said clause was accepted as the exclusive jurisdiction clause which provided the seat. The orders passed by the Delhi High Court are quoted below:-

- "1. After some arguments, learned counsel for the petitioner seeks leave to withdraw the instant petition with liberty to file proceedings before the appropriate Court.
- 2. Leave and liberty, as prayed for, are granted and the petition is dismissed as withdrawn.
- 3. Needless to state that this Court has not expressed any opinion on the merits of the case."

20. The arbitration clause should be harmoniously construed, to give maximum meaning to the intention of the parties, by ensuring that none of the clauses are either redundant or rendered otiose. The parties had inserted each clause with a purpose. Hence, as the parties failed to choose institutional arbitration, section 11 would be applicable and the petitioner has rightly approached this court.

21. Under such circumstances, this Court is of the view that the application should be allowed. While venue refers to the physical location of the hearings, the seat determines the legal jurisdiction governing the arbitration. As the arbitration agreement designates a seat, this court has the jurisdiction, as a referral court. The issues of arbitrability, limitation, admissibility, consequence of the memorandum of payment etc., are not

gone into. Justice Siddhartha Roychowdhury, former Judge of this Court is appointed as the learned arbitrator. The appointment is subject to compliance of Section 12 of the said Act. The learned arbitrator shall fix his own enumeration as per the schedule of the said Act.

22. AP COM 169 of 2025 is disposed of accordingly.

23. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)