

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA NO: GA-COM/1/2025
IN CS-COM/27/2025

M/S AADARSH TRADLINK LIMITED
VS
M/S RCCPL PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: July 16, 2025.

Appearance :

Mr. Tapan Coomar Dey, Adv.
Mr. Vijay Nath Jha, Adv.
Ms. Shreya Chatterjee, Adv.
Mr. Sourav Ganguly, Adv.
... for the plaintiff

Mr. Samrat Sen, Sr. Adv.
Mr. Arif Ali, Adv.
Mr. Iftekr Munsif, Adv.
Mr. Prabhat Kr. Srivastawa, Adv.
Ms. Ankita Singh, Adv.
... for the defendant

1. The defendant has filed the present application being GA-COM/1/2025 praying for dismissal of the suit and referring the parties to the arbitration.
2. Mr. Samrat Sen, Learned Senior Advocate representing the defendant draws the attention of this Court to the agreement entered between the parties dated 26th February, 2019 along with General Conditions of Contract under Chapter-5, wherein in clause 18.7 there is an arbitration clause which reads as follows:

“If the efforts to resolve all or any of the disputes, differences or controversy through negotiation fail, then such disputes or

differences or controversy, whatsoever arising between the Parties, arising out of or relating to manufacture/construction, measuring operation or effect of the Contract or the breach thereof shall be referred to arbitration in accordance with the following provisions:

- (a) Matters to be arbitrated upon shall be referred to a sole arbitrator. The sole arbitrator shall be appointed mutually by the Parties and in case the parties fail to agree on the sole arbitrator, then the sole arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996. In the arbitration panel, each Party shall nominate one (1) arbitrator each and the third arbitrator shall be chosen by the two (2) arbitrators nominated by the Parties. The arbitrator(s) shall be appointed within a period of thirty (30) days from the date of receipt of written notice/demand of appointment of arbitrator from either Party.*
- (b) The arbitration proceedings shall be held in Kolkata. The language of proceedings, documents and communication shall be English.*
- (c) The award of the sole arbitrator or the award by majority of three arbitrators as the case may be shall be binding on all Parties.”*

3. Mr. Sen submits that relying upon the said arbitration clause, the plaintiff had issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 5th September, 2022 for appointment of Arbitrator. On receipt of the said notice, the defendant has replied to the plaintiff intimating that invocation of the Arbitration Clause is premature in presence of negotiation clause thereto and requested the plaintiff to complete the first steps then you can invoke the second step for appointment of Arbitrator. Subsequently, the plaintiff had issued the notice of demand under Rule-5 of the Insolvency and Bankruptcy for initiation of the proceeding under the I.B.C. The plaintiff has initiated proceeding before the NCLT being Company Petition (IB) No. 67/MB of 2022. When the matter was taken up by the Learned Tribunal, Learned Counsel for the plaintiff informed the Tribunal that the plaintiff is intending to continue with the arbitration proceeding.
4. Accordingly, the proceeding initiated before the National Company Law Tribunal was withdrawn and the same was dismissed. Instead of initiation of arbitration proceeding, the plaintiff has filed the present suit.
5. Learned Counsel for the plaintiff submits that if the Court refers the matter to the arbitration, the plaintiff will take appropriate steps.
6. In view of the submission made by the Counsel for the parties and after perusing the arbitration clause, this Court finds that

the suit is not maintainable as there is an arbitration clause between the parties and the plaintiff has acted upon the Arbitration Clause of the said agreement.

7. In view of the above, the parties are directed to take appropriate steps for appointment of arbitrator in accordance with the Clause 18.7 of the General Conditions of Contract appearing at page 145 of the present application.
8. Accordingly, CS-COM/27/2025 is dismissed and GA-COM/1/2025 is disposed of.

(KRISHNA RAO, J.)