

OCD 13

ORDER SHEET

AP-COM/183/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

MUKUL MAJUMDER
VS
UNION OF INDIA

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

Mr. Kamal Kr. Chattopadhyay, Adv.
Mr. Debdeep Sinha, Adv.
Ms. Rimi Chatterjee, Adv.
...for the petitioner.

Mr. A. Banerjee, Adv.
Mrs. Sarda Sha, Adv.
...for the respondent.

1. The petitioner prays for appointment of a learned arbitrator, to arbitrate upon the disputes which have arisen pursuant to the work executed by the petitioner in respect of the Notice Inviting E-Tender bearing no.01/NIT/SE(E)/KCEC-I/2017-18, issued some time in 2017, by the Executive Engineer, Kolkata Central Electrical Division-V, CPWD, Kolkata. The work was for renovation and up-gradation of a Sub-station along with switchgear equipments, for the main institute building at NIOH campus, B. T. Road, Bon-Hooghly, Kolkata – 700 090 (SH: SITC of 2x400 KVA Sub-station equipments and 1 No.315 KVA silent type DG set i/c Construction of Sub-station Building, Septic tank, Internal water supply, Sanitary Installation, Drainage and pathway). The work order

was issued on August 14, 2017 and an agreement was entered into between the parties. Schedule 'F' of the agreement mentions that the CPWD General Conditions of Contract for Central PWD Works 2014, would be applicable. Clause 25 of the CPWD General Conditions of Contract contains an arbitration clause.

2. The petitioner contends that although the scheduled date for completion of the work was March 3, 2018, the work was completed on November 29, 2019 with a delay of 636 days, upon extension of time by the respondent. The delay was allegedly on account of the respondent not being able to hand over free site. The petitioner alleges that there was escalation of cost on account of the delay caused by the respondent. Although the work was completed, the respondent did not pay the enhanced cost and also the bills raised accordingly. Thus, the demand notice was sent to the respondent upon invocation of Clause 25 dated November 16, 2023. The petitioner forwarded the claim to the Executive Engineer, Kolkata, Central Electrical Division-I, CPWD. The Executive Engineer failed to resolve the disputes. Accordingly, by letters dated February 16, 2024 and March 26, 2024, the Chief Engineer (Kolkata), CPWD was requested to appoint a sole arbitrator as per Clause 25 of the General Conditions of Contract. The petitioner claimed that the Dispute Redressal Committee (DRC) was not available at that stage.
3. By a letter dated March 26, 2024, the petitioner requested the Chief Engineer, Kolkata, CPWD to appoint one out of the five persons from the said letter, who were also enlisted in the panel of Arbitrators of the

CPWD, as the sole arbitrator. The office memorandum of CPWD containing the panel of arbitrators enlisted by them is also available before this Court and this Court finds that the names of the five persons suggested by the petitioner are available from the office memorandum.

4. By a letter dated April 4, 2024, the petitioner was asked to approach the Superintending Engineer, Barasat. By a letter dated April 19, 2024, the petitioner wrote to the Superintending Engineer, Barasat, CPWD and forwarded the names of five arbitrators as suggested earlier and requested appointment of a sole arbitrator therefrom.
5. The Assistant Engineer (Civil), Barasat, CPWD by a letter dated June 7, 2024, requested the petitioner to exhaust the Dispute Redressal Mechanism before resorting to arbitration. The Dispute Redressal Committee (DRC) was thereafter constituted. The petitioner was informed by the Finance Officer, Kolkata, CPWD that the DRC would hold a meeting and the petitioner was asked to submit all his documents in support of his claim. By a letter dated July 25, 2024, a brief statement of claims along with all supporting documents were filed before the DRC. The petitioner was informed about the second date of the meeting which was to be held on September 11, 2024. The petitioner states that although two hearings were conducted by the DRC, DRC could not give a decision within the time specified. After lapse of 90 days from the second meeting, the petitioner invoked arbitration in terms of Section 21 of the Arbitration and Conciliation Act, 1996 and requested the Superintending Engineer, Barasat to

appoint a sole arbitrator. By another letter dated October 28, 2024, the petitioner forwarded five names of preferred arbitrators from the panel of CPWD.

6. The contentions of the parties and the history of the activities narrated hereinbefore, clearly indicate that the petitioner has attempted to exhaust the pre-arbitration resolution mechanism. The attempt failed. Thus, it would be of no use to await any further decision from the DRC. Relegating the matter back to DRC for a decision will be an empty formality and a wastage of time, effort and resources.
7. Reference is made to the decision of ***Visa International Ltd. v. Continental Resources (USA) Ltd.***, reported in ***(2009) 2 SCC 55***. 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.”

8. The petitioner submits that the petitioner will not raise any objection, on account of appointment of an arbitrator from the curated panel of the CPWD, as the petitioner himself wants such appointment in view of the nature of the dispute.
9. This Court finds existence of an arbitration clause. This Court also finds that there is an existing dispute. The invocation was made some time in 2023 in terms of the General Conditions of Contract. The petitioner is also entitled to the exemption of the period between March 15, 2020 and February 28, 2022 in computation of the period of limitation. However, all objections with regard to the merits, arbitrability, claim being time barred etc., are matters which are to be decided by the learned arbitrator and the respondent is at liberty to raise all these issues at the appropriate stage.
10. The petitioner himself, has prayed that an empanelled arbitrator from the list of CPWD be appointed.
11. Accordingly, Mr. Sansar Pattanaik, whose name appears at serial no.11 of the panel contained in office memorandum dated April 13, 2023, is appointed as the sole arbitrator to arbitrate upon the disputes between the parties. The fees of the learned arbitrator will be as mentioned in the office memorandum.
12. AP-COM/183/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)