

ORDER

OCD-15

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/211/2025
M/S. BHAGAT CONSTRUCTION
VERSUS
M/S. ASPIRA LOHARUKA DEVELOPERS LLP

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21st April 2025.

Appearance:

Mr. Rachit Lakhmani, Advocate
Mr. Aditya Kanodia, Advocate
... for the petitioner.

1. Despite service, none appears for the respondent.
2. This is an application for appointment of an arbitrator in terms of Clause 16.0 of the agreement for construction dated February 1, 2018. The disputes arose out of termination of the agreement and also non-payment of dues. Several demand notices have been referred to by the petitioner in support of the contention that the services rendered by the petitioner were accepted by the respondent, but payments in respect thereof were not made despite demand notices. The respondent replied to the demand notice, by a letter dated August 21, 2023, inter alia, relying on the termination of the contract. It was contended that, upon termination of the contract, nothing was due and payable. That apart, all the money claims of the petitioner were allegedly barred by limitation.

3. The petitioner thereafter invoked the arbitration clause, by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on August 22, 2023. The petitioner's contention is that the letters exchanged between the parties would clearly indicate that there were live disputes.
4. By order dated January 10, 2022, the Hon'ble Apex Court had excluded the period between March 15, 2020 and February 28, 2022 for the purpose of calculation of the period of limitation. Thus, the Court finds that in this case, the issue of limitation is a mixed question. Prima facie, the petitioner is entitled to the exclusion of time as per the order of the Hon'ble Apex Court. The invocation also, cannot be said to be belated. In the facts of the case, it does not appear to the Court that the claim of the petitioner can be said to be 'deadwood'. All issues that may be raised by the respondent before the learned arbitrator, shall be decided accordingly.
5. The application is disposed of by appointing Hon'ble Justice Debasish Kar Gupta, former Chief Justice of the High Court at Calcutta, 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 his remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)