

OCD -21

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL JURISDICTION
ORIGINAL SIDE

AP-COM/258/2025
SIMPLEX INFRASTRUCTURES LIMITED
VS
KRITA ENGINEERING PVT LTD

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 2nd April, 2025.

Appearance:

Mr. Anirban Ray, Sr. Adv.

Mr. Pranit Bag, Adv.

Mr. Ratul Das, Adv.

Mr. Anuj Mishra, Adv.

Mr. Snehasish Sengupta, Adv.

Mr. Abhishek Banerjee, Adv.

Mr. Sitikantha Mitra, Adv.

.... for the petitioner

Mr. Sabyasachi Chowdhury, Sr. Adv.

Mr. S. Laha, Adv.

Mr. C.K. Deora, Adv.

...for the respondent

Mr. Anuj Singh, Adv.

...for the Arbitrator

The Court: This is an application for termination of the mandate of the learned arbitrator and for appointment of a substitute arbitrator. Learned arbitrator is represented by counsel, although the participation of the learned arbitrator is not required in this proceeding. Learned counsel on behalf of the arbitrator submits that the arbitrator wants to recuse and has written to the parties. He submits that as one of the parties has failed to repose trust, the arbitrator seeks to recuse. Mr. Ray fairly submits that on such submission

being made on behalf of the learned arbitrator, he will not press the allegations against the learned arbitrator. Under such circumstances, the Court records affirmation to recusal of the learned arbitrator, in presence of the parties.

Learned advocate for the respondent submits that stray and unfounded allegations have been made against the learned arbitrator, which should not be supported. The admission of this application itself, would indicate that the allegations are treated to be correct. Moreover, the claimant had already invested a lot of money in the proceedings. Recusal of the learned arbitrator at this stage or termination of the mandate of the learned arbitrator at this stage, would impose a heavy financial burden on the claimant. It is further submitted that 59 sittings were held. The matter is near completion and fixed for final arguments. Only to avoid the proceedings, the petitioner has filed this application.

This Court holds that the learned arbitrator has a choice to recuse. He has exercised such choice and made his decision. The same has been communicated by a learned counsel engaged by him.

Under such circumstances, this Court is not required to go into the allegations made by the petitioner and they are deemed to be denied as no affidavits have been called for.

The merits of the application are not gone into.

According to the law, a substitute arbitrator must be appointed under Section 11 of the Arbitration and Conciliation Act. The prayer before this Court is for termination and appointment of a substitute arbitrator. In terms of the

disputes resolution clause, a sole arbitrator shall arbitrate the disputes between the parties. Although in the application, prayer has been made for appointment of sole arbitrator with sufficient pleadings, this Court is of the view that the description of the application is incorrect. The application shall be presented as one under Section 11 of the said Act.

Liberty is granted to the learned advocate on record for the petitioner to correct the description of the application.

Considering the progress made in the arbitral proceedings, this Court directs that the learned substitute Arbitrator shall proceed from the argument stage. As evidence is complete, the parties will be at liberty to pray before the erstwhile learned Arbitrator for handing over all the documents pertaining to the arbitral proceedings, so that the same may be placed before the newly appointed Arbitrator.

Under such circumstances, the application is disposed of by appointing Mr. Dhruba Ghosh, learned senior Advocate as the arbitrator, to arbitrate upon the dispute. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned arbitrator shall fix his own remuneration as per the Schedule of the Act.

(SHAMPA SARKAR, J.)