

ORDER SHEET
AP-COM/325/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SIMPLEX INFRASTRUCTURES LIMITED
VS
SUPERINTENDING ENGINEER, NORTH BENGAL HIGHWAY CIRCLE,
PUBLIC WORKS (ROADS) DIRECORATE

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 21st May, 2025.

Appearance:
Mr. Jishnu Saha, Sr. Adv.
Ms. Samya Tandon, Adv.
Mr. Arjun Basra, Adv.
Mr. Aishwarya Kumar Awasthi, Adv.
...for the petitioner

Mr. Sirsanya Bandopadhyay,
Ld. Sr. Standing Counsel
Mr. Arindam Mondal, Adv.
Mr. Paritosh Sinha, Adv.
...for the State

The Court:

1. This is an application for appointment of a learned Arbitrator in terms of Clause B.51 of the special terms and conditions of the tender document contained in the notice inviting tender dated January 6, 2011. The clause provides that *"There shall be provision for Arbitration*

under clause 25 of W.B.F. No.2911(ii)". Clause 25 mentioned hereinabove of W.B.F. No.2911(ii) provided as follows:-

"Clause 25 – Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of or relating to the contracts designs, drawings, specifications, estimates, instructions, orders or those conditions or otherwise concerning the works, or the execution, or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the sole arbitration of the Chief Engineer of the Deptt. Should the Chief Engineer be for any reason unwilling or unable to act as such arbitrator, such questions and disputes shall be referred to an arbitrator to be appointed by the chief Engineer. The award of the arbitrator shall be final conclusive and binding on all parties to his contract."

2. The tender notice was floated on January 6, 2011. The bid was valid upto December 31, 2011. The bids were opened on June 28, 2011. The petitioner was the L1 bidder. The Government of West Bengal by a notification dated December 13, 2011, declared that the arbitration provision in the PWD contracts would have no effect from the date of the Gazette Notification. The petitioner contends that the respondent did not intimate the petitioner about the alteration in the terms and

conditions and the effect of such notification. The relevant extract of the notification is reproduced hereunder:-

“There shall henceforth be no provision for arbitration for resolution of disputes that may arise out of the contracts to be entered into by the PWD with the contractors for purpose of carrying out execution of public works.”

3. The respondent by a letter dated January 25, 2012, requested the petitioner to extend the validity of the bid upto March 31, 2012. At the relevant time as well, the respondent did not disclose the change in the terms and conditions. The petitioner consented to the request for extension and the Letter of Acceptance (LOA) was awarded on February 3, 2012. No communication was received from the respondent with regard to the deletion of the arbitration clause. Disputes arose on account of delay. The petitioner's contention was that the delay was not attributable to the petitioner. Excess work, beyond the scope of the tender had been included. Accordingly, the petitioner prayed for extension of time on five occasions. Such extensions were allowed.
4. On October 25, 2019, a meeting was held in the office of the Sub-Divisional Officer, Dinhata and it was decided that the respondent would hand over the land to the petitioner with the help of local administration. Deployment of adequate security at the site was also promised. The land was made available in November, 2019 and it was decided that the petitioner would complete the remaining project within December 30, 2020. The project was completed on December 28, 2020.

5. The petitioner alleges to have incurred huge overrunning costs due to idling of its resources at the project site for various reasons and also imposition of tax under the new GST regime. Correspondence continued between the parties. As the disputes remained unresolved, the petitioner invoked arbitration by a letter dated May 23, 2023. The Superintendent Engineer, North Bengal Highway Circle P.W. (Roads), Directorate responded to the letter vide his letter dated July 12, 2023 and refused to refer the dispute to arbitration in view of the notification dated December 13, 2012, published by the Government of West Bengal. That was the first time when the petitioner was informed about the notification and deletion of the arbitration clause. The petitioner informed the authority that arbitration should proceed in view of the fact that the notice inviting tender has been issued prior to deletion of the said clause and the petitioner was kept in the dark about the deletion of the arbitration clause, after the petitioner was selected as the L1 bidder. The respondent remained silent.
6. The petitioner filed WPA 21705 of 2024 challenging the aforementioned actions. The letter dated July 12, 2023, issued by the respondent was set aside and the writ petition was allowed. The learned Judge held that change in the terms and conditions of the notice inviting tender, after the completion of the bidding process, was illegal. Consent had not been obtained from the bidder.
7. Under such circumstances, the writ court had held the arbitration clause provided in the terms and conditions of the notice inviting tender

would remain in the present case. Accordingly, this application has been filed for appointment of a learned Arbitrator on the ground that the named arbitrator in the clause was an interested party and the mechanism prescribed in the clause, was no longer permissible in law.

8. There is no quarrel with the proposition that unilateral appointment of arbitrators or appointment of a named arbitrator who has substantial interest in the result of the arbitration is hit by the provisions of Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Vth and VIIth Schedules. The Hon'ble Apex Court has held that such appointment would be violative of Article 14 of the Constitution of India as the parties who agreed to refer the disputes to arbitration would not have an equal say in the matter of appointment of an Arbitrator.
9. By way of abundant caution, the petitioner had taken steps for pre-litigation mediation. Although, the petitioner was misinformed about the institution of the suit, it has been brought to the notice of the Court that, the suit was yet to be filed but the petitioner had proceeded with the pre-litigation mediation. In any event, it is informed to the Court now, that the pre-litigation mediation has failed. The failure of the pre-litigation mediation does not in any way affect the existence of the arbitration clause, in view of the decision of the writ court.
10. Mr. Sinha contends that the claims of the petitioner are not substantiated by any documents and some of the disputes are not arbitrable. The point of limitations has also been raised. In my opinion,

these objections must be raised before the learned Arbitrator. All points are kept open to be decided by the learned Arbitrator.

11. Under such circumstances, the Court appoints Hon'ble Justice Jyotirmay Bhattacharya, 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 own remuneration as per the Schedule of the Act.
12. AP-COM/325/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)