

ORDER SHEET
AP-COM/337/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

H P ISPAT PRIVATE LIMITED
VS
MUKTI MOHAN MONDAL

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 1st May, 2025.

Appearance:
Mr. Debraj Sahu, Adv.
Ms. Sucheta Mitra, Adv.
Mr. Tamoghna Saha, Adv.
...for the petitioner

Ms. Sweta Mukherjee, Adv.
...for the respondent

The Court:

1. This is an application for appointment of a learned Arbitrator on the strength of Clause 2 of the invoices raised by the petitioner for supply of goods. The relevant clauses are quoted below:

“TERMS OF SALE:

- 1. The buyer/consignee has no ownership, right and title over the goods stated herein below, till the last penny of the subject invoice is paid and certificate of transfer of ownership, right and title over the goods is specially issued by us in the favour of buyer/consignee.*
- 2. It is mutually agreed and accepted by all the parties herein, that all disputes and differences, if any in respect of matters relating to and/or concerning and/or arising out and/or touching the subject matter of the contract or purchase order or arising out of the subject matter shall*

be referred to the sole Arbitration of Mr. Suresh Ch Agarwal, 6 Barbour Road, Room no.105, Kolkata 700001, West Bengal, India in terms of the Arbitration Conciliation Act, 1996 as amended/modified from time to time. The Learned Arbitrator shall have summary powers and shall be entitled to make a nonspeaking Award to adjudicate the dispute and/or difference. The award made and published by the Ld. Arbitrator shall be final and binding on the parties herein. The Arbitration proceeding shall be governed, in accordance with the Laws of India which shall be the basis and operative Law of this agreement. The place/venue/seat of arbitration must be 6, Barbour Road, Room no.105, Kolkata 700001, West Bengal, India. The language of the arbitration must be in Indian English only. The parties shall be entitled to invoke the provision of part 1 of the Arbitration and Conciliation Act, 1996. The Hon'ble City Civil Court, Calcutta and Hon'ble High Court, Calcutta, West Bengal, India shall have alone, exclusive and only jurisdiction alone. The loser part must bear all the arbitration and/or litigation charges.

3. The learned City Civil Court, Calcutta and Hon'ble High Court Calcutta, West Bengal, India shall have alone, exclusive and only jurisdiction."

2. It is submitted that all the invoices contain the same clause. It is urged that the invoices form a part of a continuous business transaction and a composite reference would be beneficial to the parties.
3. The respondent is the dealer of the petitioner's brand, namely, TMT Bars. The dealership agreement was executed between the parties. The agreement was entered into at the registered office of the petitioner at R.N. Mukherjee Road, Kolkata – 700001.
4. According to the petitioner, the invoices were sent to the respondent against the goods supplied by the petitioner, but the dealer did not make necessary payments. The invoices which have been annexed to this application are those in respect of which payments are still due.

5. Learned advocate for the respondent submits that the dealership agreement was never provided by the petitioner and as such, the respondent is still not aware of the liabilities under the said dealership agreement. It is next contended that, in the course of business, several invoices were raised and paid by the respondent but the claim in the subject invoices are disputed. The respondent, has never accepted the said invoices.
6. In my opinion, as the invoices were raised in an ongoing business relationship between the parties on the basis of a dealership agreement, a composite reference with regard to the sum due and payable to the petitioner which is denied by the respondent, should be made. A sole arbitrator will be sufficiently equipped to adjudicate the dispute which has arisen between the parties, out of the same business relationship arising from one dealership agreement. The arbitration clause is contained in the invoices and the existence of the clause is available. The respondent, however, denies the veracity of the claim raised in the invoices and submits that those invoices which are the subject matters of this application have never been accepted by the respondent. They are not liable to pay the amounts. The dealership agreement was not supplied to the respondent. Thus, the objection of the respondent, consequences suffered by the respondent on account of non-supply of the dealership agreement, the dispute with regard to the inadmissibility of the claim must be decided by the learned Arbitrator. These issues

are to be decided on evidence and the referral court is not required to conduct a mini trial. All points are left open.

7. Under such circumstances, the Court appoints Mr. Sanjib Kumar Mal, learned Advocate (Mob. No.8420794656), as the 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.
8. AP-COM/337/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)