

OCD 11

ORDER SHEET
AP-COM/350/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

LEVIATHAN INFRAPROJECTS LLP
VS
UNITY VINCOMM PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 20th August, 2025.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Sidhartha Sharma, Adv.
...for the petitioner

Mr. Dhrubaneel Biswas, Adv.
Mr. Subhadeep Maitra, Adv.
...for the respondents

1. This is an application for appointment of an arbitrator under two agreements which are interconnected. The parties entered into a Lease Agreement dated May 1, 2022 for a period of nine years, which was to expire on April 30, 2031. Lease of two units in 'Jasmine Tower', 31, Shakespeare Sarani, Kolkata – 700 017, had been granted by the petitioner in favour of the respondent, at a monthly lease rent of Rs.4,10,000/- with applicable GST for the first three years and thereafter with increments as provided in the said lease deed.
2. By another agreement dated September 2, 2022, the respondent was granted the right to use the furniture and fixture in the premises for a

period of nine years at a monthly rent of Rs.3 lakhs for the first three years with increments thereafter. According to the petitioner, disputes arose when the respondent failed to pay the lease rent and the cheques of the respondent were dishonored. Particulars of the dues have been stated in paragraph 15 of the application. It is contended by the petitioner that the lease was terminated. The total demand on account of non-payment of the lease rent and the rent for furniture and fixture as on January 22, 2024 was Rs.88,27,950.78/-.

3. By a letter dated January 30, 2024, the notice invoking arbitration was issued in terms of Clause 18 of the Lease Deed dated May 1, 2022 and Clause 7 of the agreement dated September 2, 2022. As both these agreements are inter-connected and inter-related, the petitioner used one notice invoking arbitration and suggested consolidated arbitration. The agreements are co-extensive and co-terminus, according to the petitioner. The petitioner suggested the name of a sole arbitrator. It is contended that the respondent did not reply to the said notice invoking arbitration.
4. Learned advocate for the respondent submits that a suit for declaration of tenancy and other reliefs had been filed before the learned civil Court and the learned court is in seisin of the matter. The petitioner entered appearance in the suit but did not take any steps. Thus, reference should not be made at this stage, as the learned civil court was in seisin of the issue. It is also urged that the respondent was thrown out of the premises forcefully, without refund of the security deposit of more than Rs. 4.50

crores. The respondent was always willing to come to a settlement on the issue, but the petitioner wrongfully withheld the security deposit.

5. Having heard the rival contentions of the parties, this Court is of the view that the referral court is only required to ascertain whether the parties had agreed to refer their dispute arising out of the agreement, to arbitration. It is also found that both these agreements are intrinsically connected and both have an arbitration clause. The issue before the learned civil court with regard to declaration of tenancy of the respondent is not a part of the claim of the petitioner. This court does not express any opinion on the said proceeding. The proceeding before the civil court will continue in accordance with law and the petitioner submits that it is taking steps to file an application under Section 8 of Arbitration and Conciliation Act, 1996.
6. Be that as it may, Section 8(3) of the Arbitration and Conciliation Act, 1996 provides that even if an application under Section 8(1) of the Act is pending before a civil court, the same shall not be an impediment for the referral court to refer a dispute to arbitration. Under such circumstances, without making any observation either on the merits of the civil suit or the remedies available to the parties in the said suit, the application is allowed by referring the dispute to arbitration. The respondent will be at liberty to take all points with regard to lack of jurisdiction of the learned arbitrator due to pendency of the suit, arbitrability of the dispute, admissibility of the claims, limitation etc. before the learned arbitrator.

7. Under such circumstances, the application is disposed of by appointing Mr. Aritra Basu, Advocate, Bar Library Club, as an 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.)