

ORDER

OCD-7

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/417/2025
M/S. SPC INFRAS PROJECTS
VS
M/S. CENTURY ADHESIVES & CHEMICALS LTD. & ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21th MAY, 2025.

Appearance:

Dr. Moksha Kalyanram Abhiramula, Adv.

Mr. Aditya Mondal, Adv.

Mr. Washim Dafader, Adv.

... for petitioner.

Mr. Pranit Bag, Adv.

Mr. Pradeep Jewarajka, Adv.

Ms. Pooja Jewarajka, Adv.

Ms. Anjali Tulsian, Adv.

... for respondent nos. 1 & 2.

1. This is an application for appointment of a learned arbitrator in terms of clause 27 of the terms and conditions of the agreement. It is contended that the terms and conditions formed part of the contract. The petitioner was allotted purchase orders by M/s. Century Plyboards (India) Limited and the works to be done were for M/s. Century Adhesives & Chemicals Limited. M/s. Century Adhesives & Chemicals Limited, represented by their officials at Andhra Pradesh and Taratala, Kolkata, have been impleaded as respondents. The petitioner contends that the terms and conditions are general in nature and the buyer has been described as M/s. Century Plyboards (India) Limited or its group companies. The term seller includes all persons, firms, corporation and companies etc. who

agreed to sell to purchaser. In this context, M/s. Century Plyboards (India) Limited or its group company is the buyer and the petitioner is the seller.

2. Disputes and differences arose upon termination of the purchase orders. The petitioner has relied upon certain documents to show that the parties had dealt with the disputes arising out of the purchase orders in a composite manner. During the mediation, the termination notice was issued which, according to the petitioner, was improper.
3. The petitioner invoked arbitration by a notice dated March 19, 2025 and requested reference of the dispute. Names of two individuals were proposed. Learned advocate representing the respondents i.e. M/s. Century Adhesives & Chemicals Limited, by a letter dated April 8, 2025, denied the claims and allegations of the petitioner and also put forward their counterclaims. The names of two retired Hon'ble Judges were suggested. The said letter also records the failure of mediation.
4. Mr. Bag, learned advocate for the respondents, submits that M/s. Century Plyboards (India) Limited was the buyer. The terms and conditions applicable to the purchase orders provide so. The respondents were not signatories to the terms and conditions. Involvement of the respondents and how the respondents were interlinked or interconnected with the commercial transaction arising out of the purchase orders have not been pleaded. Without impleading M/s. Century Plyboards (India) Limited as a respondent, the group companies could not be proceeded against.

Reliance has been placed on the decision in ***ASF Buildtech Private Limited v. ShapoorjiPallonji and Co. Pvt. Ltd.*** reported in ***2025 SCC OnLine SC 1016***, in support of such contention. According to Mr. Bag, unless commonality in the transaction between M/s. Century Plyboards (India) Limited and the respondents is displayed from the pleadings, the application should fail on the ground of non-joinder and mis-joinder of parties.

5. According to the petitioner there is an arbitration clause in the terms and conditions which were made applicable to the purchase orders. The clause is in existence. The fact that the dispute is alive is also available. The arbitration clause provides for pre-arbitration mediation. The fact that mediation had commenced, but the same failed, is also available from the records. The communications indicate that the respondents has threatened to terminate the purchase orders and mails were issued in respect of those purchase orders.
6. Thus, the issue to be now decided is whether impleadment of the respondents alone, would be sufficient to refer the dispute to arbitration.
7. In the terms and conditions, the buyer has been designated as M/s. Century Plyboards (India) Limited or its group companies. The purchase orders depict that the works were for M/s. Century Adhesives & Chemicals Limited. Some of the emails which proposed termination were issued by M/s. Century Ahesives & Chemicals Ltd. to one Somasekhar, whereas, others were issued by one Vivek Mishra for M/s. Century

Plyboards (India) Ltd. These documents indicate that M/s. Century Plyboards (India) Ltd. and M/s. Century Adhesives & Chemicals Ltd. have commonality of interest in the aforesaid transaction. The notice invoking arbitration was issued to the respondents by the learned advocate for the petitioner and names of two arbitrators were proposed. The respondents replied through their learned advocate without denying the existence of the arbitration clause and did not contend that the clause was not binding upon them. Rather, in paragraph 4 of the reply, the said respondents mentioned the heads under which they had counterclaims against the petitioner. Although the respondents agreed to reference of the dispute to arbitration, the objection was with regard to the names proposed by the petitioner. The letters indicate that the parties were *ad idem* that the dispute must be resolved by arbitration.

8. The communications also indicate that the respondents accepted that there was existence of an arbitration clause which was binding upon the respondents. As a referral court, these facts are sufficient to refer the dispute to the arbitration of a sole Arbitrator, keeping all points raised by Mr. Bag open. The issue of mis-joinder and non-joinder of the parties , arbitability, jurisdiction of the arbitrator can be raised before the learned Arbitrator. Any other objection that is available, shall also be raised before the learned arbitrator.
9. In the decision of ASF Buildtech Private Limited (supra), the Hon'ble Apex Court held that Section 16 of the Act, 1996 empowers the Arbitral Tribunal to determine its own jurisdiction, which was an inclusive

provision that covered all jurisdictional questions including the determination of who was a party to the arbitration agreement and who was not. Thus, the issue of joinder, non-joinder or mis-joinder, was a question which fell within the domain of the learned Arbitrator.

10. Under such circumstances, the application is allowed. This Court appoints Hon'ble Justice Siddhartha Roy Chowdhury, former Judge of this Court (Mob: 9434196059) 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/her own remuneration as per the Schedule of the Act.

11. The application is disposed of.

(SHAMPA SARKAR, J.)