

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/424/2025

SURYA ALLOY INDUSTRIES LIMITED
VERSUS
SOUTH EASTERN RAILWAY & ORS.

BEFORE :

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21st May, 2025.

Appearance:

Mr. Tanoy Chakraborty, Adv.
Mr. Farhan Ghaffar, Adv.
Mr. Subhash Jana, Adv.
...for the petitioner.

Mr. Siddhartha Lahiri, Adv.
Mr. Guddu Singh, Adv.
Mr. Debraj Dutta, Adv.
Ms. Nivedita Mullick, Adv.
. . . for the respondents.

The Court : This application has been filed with the following
prayers:-

- a) *An order of injunction be issued restraining the respondents from giving any effect and/or further effect to the 4(four) numbers of Warranty Rejection Advices Nos. 09250003, 09250004, 09250005, 09250006 dated 24th April, 2025 and the warranty rejection advice no. 09250001 dated 2nd April, 2025 being Annexure "M" hereto till disposal of the application;*
- b) *An order of injunction be issued restraining the respondents from recovering the sums indicated in paragraph 22 hereinabove in terms of the said 4 (four) numbers of Warranty Rejection Advices Nos. 09250003, 09250004, 09250005, 09250006 dated 24th April, 2025 and the warranty rejection*

advice no. 09250001 dated 2nd April, 2025 being Annexure "M" hereto till disposal of the application;

- c) A fit and proper person be appointed as Receiver with a direction to take possession of the said goods more fully and particularly described in the Purchase Order personally or through his authorized agent and the said Receiver and/or the agent be empowered to take police help, if necessary for the purpose of obtaining physical possession of the said goods.*

It is contended by the petitioner that random sampling was done of 40 Elastic Railway Clips out of total quantity of 2,36,000 clips which were supplied by the petitioner. According to the petitioner, amongst 40 samples which were tested, six were found to be proper. Thus, it is contended that the advice to replace the remaining which were not tested, was contrary to the terms and conditions of the contract. If six out of 40 samples which were tested, were found to be as per the specifications, assuming though not admitting that the testing was done in a proper manner, there is a possibility that amongst the remaining untested samples there could be clips within the permissible limit, as per the terms and conditions of the contract. The terms and conditions of the agreement provide that replacement may be required even for a portion of the clips supplied, if they were either not within the permissible limit or deficient in any way.

Mr. Lahiri submits that it was not possible for the respondents to test the entire bunch of 2,36,000 Elastic Railway Clips. The method of sampling followed was provided under the Indian Railway Standard Specification and the correct procedure was adopted.

Heard the parties.

The dispute which has been raised, has to be decided in arbitration. However, as an interim protection and equities being balanced, 34 Elastic Railway Clips which have been found to be defective shall be replaced by the petitioner. The respondents are restrained from taking coercive steps and recovering any money from the petitioner, for a period of four weeks. The said replacement will be done within three weeks from the date of the receipt of the replacement advice. Within one week, the replacement advice shall be issued by the respondents. If the petitioner replaces the said Elastic Railway Clips, the interim order will continue for a period of 90 days.

The respondents have already called the petitioner for a joint inspection. The petitioner will participate in the joint inspection and raise his contentions during such inspection. The petitioner will take steps to initiate arbitration in terms of the clause.

The petitioner is at liberty to initiate arbitration proceedings. The challenge to the methodology of testing, claim of the respondents etc. are matters to be decided in arbitration.

This order is passed without prejudice to the rights of the parties.

The application stands disposed of.

As no affidavits have been called for, the allegations made in the application are deemed to be denied.

(SHAMPA SARKAR, J.)