

ORDER SHEET  
AP-COM/635/2024  
IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL DIVISION

PREMCO RAIL ENGINEERS LIMITED  
VS  
KESAR MULTIMONDAL LOGISTICS LTD.

BEFORE:  
The Hon'ble JUSTICE SHAMPA SARKAR  
Date: 3<sup>rd</sup> July, 2025.

*Appearance:*  
*Mr. Pranit Bag, Adv.*  
*Mr. Anuj Kumar Mishra, Adv.*  
*Mr. Balaram Patra, Adv.*  
*Mr. Anousko Das, Adv.*  
*...for the petitioner*

*Mr. Rohit Das, Adv.*  
*Ms. Kishwar Rahman, Adv.*  
*Ms. Divya Tekriwal, Adv.*  
*...for the respondent*

The Court:

1. Affidavit-in-opposition is taken on record.
2. This is an application for interim protections and direction upon the respondent to secure a sum of Rs.3.26 crores. The petitioner submits that the said dues are outstanding since long. The petitioner was unable to recover the money and the dispute was referred to arbitration.
3. The respondent participated in the said arbitration proceeding but suddenly filed an application before this Court for recall of the order of appointment of an arbitrator. Such action of the respondent gave rise to an apprehension that the respondent was unwilling to pay and was

attempting to deprive the petitioner from recovering the dues. It is also submitted that twice the respondent had undergone CIRP which shows that the financial health of the respondent was not sound. Thus, this application has been filed during the pendency of the application for recalling of the order of reference, for urgent reliefs. Reliance has been placed on a communication of the respondent, which shows that the respondent proposes to transfer 100% of the shares to another company.

4. Mr. Das, learned advocate, for the respondent submits that this application was entertained by this Court and a direction for affidavits was issued. The point of maintainability of this application before this Court was kept open. According to Mr. Das, this Court does not have the territorial jurisdiction to entertain the application as it is not the principal civil court as defined under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.
5. Mr. Bag submits that the order of appointment of the arbitrator clearly indicates that the referral court had held that part cause of action arose within Kolkata. Reference is made to the pleadings in the application under Section 11 of the Arbitration and Conciliation Act, 1996 to show that correspondences had been exchanged between the parties from Kolkata.
6. From the tenor of the pleadings made in the application under Section 11, it appears that the petitioner sought to establish on the jurisdiction of the Court to entertain an application under Section 11 of the

Arbitration and Conciliation Act, 1996, on the ground that all the correspondences took place from its office at New Town, Rajarhat, Kolkata. The notice of winding up was also issued from its office at New Town. However, to entertain an application under Section 9 of the Arbitration and Conciliation Act, 1996, the principal civil court is the only court which can exercise jurisdiction. Admittedly, the pleadings do not indicate that even a miniscule of the cause of action had arisen within the ordinary original civil jurisdiction of this Court. The jurisdiction of a referral court and jurisdiction of the principal civil court to entertain an application are different. This distinction is available from a clear reading of Section 11 of the said Act. The Chief Justice of the High Court or his designate can appoint an arbitrator in case of domestic arbitration. Thus, even if part cause of action took place in New Town, the High Court could be the referral court. The jurisdiction to entertain an application under Section 9 of the said Act and to pass interim orders, vests with a 'court' as defined under Section 2(1)(e) of the Act.

7. Under such circumstances, the application is dismissed on the ground of lack of jurisdiction of this Court to entertain the application under Section 9 of the Act.
8. These observations are restricted to the decision in this application. The issue pending adjudication before the court for recalling of the order of reference will be decided on its own merits. The petitioner is at

liberty to proceed before the appropriate court for necessary order, strictly in accordance with law.

9. As the matter is being disposed of on the point of jurisdiction, this Court has neither gone into the factual contents in the affidavit in opposition nor into the merits of this application.

(SHAMPA SARKAR, J.)