

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/484/2025
H R ISPAT PRIVATE LIMITED
VS
DAMODAR VALLEY CORPORATION

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 19th June, 2025.

Appearance:

Mr. Tanay Chakraborty, Adv.

Mr. Shayak Mitra, Adv.

Mr. Abhijit Sarkar, Adv.

.... for the petitioner

Ms. Amrita Pandey, Adv.

Mr. Supratim Ghosh, Adv.

...for the respondent

The Court: This is an application for appointment of a learned arbitrator in terms of clause 24 of the agreement for supply of electric energy, entered into between the parties on December 11, 2008. The dispute arises out of non payment of tariff as claimed by the respondent. The arbitration clause is quoted below :

“If at any time question, dispute or differences between the Corporation and the Consumer in regard to any matter relating to or in connection with this Agreement, barring any such may arise in the Corporation’s exercising power of doing acts under the provision of Damodar Valley Corporation Act, 1948 (Act XIV of 1948) or under any other Act for the time being in force or under the terms of this Agreement, either party may forthwith give to the other in writing to the existence of such question, dispute or differences and the same

shall be referred to the three Arbitrators, one to be appointed by the Arbitrators appointed by each party as presiding Arbitrator for adjudication of dispute in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification thereof the time being in force. The cost of Arbitration so agreed to by and between the parties, shall equally be borne by both the parties.

Provided that in case of any such reference it will be obligatory on the consumer to make full payment of all arrear dues along with surcharge, if any and current dues and any other dues to the Corporation beforehand and continue paying such dues which may accrue from time to time within the period as mentioned in the foregoing clauses so long the Arbitration is pending. Should the consumer be held entitled to any return it will be credited by the Corporation afterwards on receiving the Award of the Arbitration and after having accepted by the Corporation such award and will be through subsequent bills in the form of adjudication in a manner to be decided by the Corporation.”

The petitioner submits that the tariff for the period 2017-2018 had been determined by the West Bengal Electricity Regulatory Commission on May 5, 2022. The petitioner filed a writ petition challenging such tariff regulations. The writ petition was dismissed on February 17, 2023 and an appeal was preferred which is pending. The Appeal Court directed the petitioner to pay 50% of the arrears based on the tariff order and the remaining 50% was to be secured by a bank guarantee. Such interim order was passed subject to the final result of the appeal. The tariff order dated May 5, 2022 was also appealed against by different consumers before the Appellate Tribunal for electricity. The Appellate Tribunal subsequently directed the consumer to pay 50% of the

arrears dues and secure remaining 50% by a bank guarantee. The respondent raised a dispute with regard to the unpaid dues and delayed payment surcharge. A notice invoking arbitration was issued by the respondent. The petitioner replied to the said notice and did not accept the claims. The petitioner has now approached this Court for appointment of an arbitrator on the basis of notice issued by respondent, to refer the dispute to arbitration in terms of the agreement. The application is allowed, in view of the existence of the arbitration clause and invocation thereof. The issues with regard to the arbitrability of the claims, admissibility, limitation etc. shall be decided by the learned Arbitrator.

Both the learned advocates submit that a sole arbitrator be appointed, which would be more cost effective and request the Court to refer the dispute to a sole arbitrator.

Under such circumstances, keeping all the points available to the respondent open and be raised before the learned arbitrator, this application is disposed of by appointing Mr. Debnath Ghosh, learned senior advocate, Bar Library Club as the sole arbitrator, to arbitrate upon the disputes between the parties. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the Schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)