

ORDER SHEET  
IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL JURISDICTION  
ORIGINAL SIDE

AP-COM/533/2025  
M/S ASHOK KUMAR JAIN  
VS  
UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 23<sup>rd</sup> July, 2025.

Appearance:

*Ms. Sristi Barman Roy, Adv.*

*Mr. Kamal Kr. Chattopadhyay, Adv.*

*Mr. Aurin Chakraborty, Adv.*

*Ms. Rimi Chatterjee, Adv.*

*.... for the petitioner*

*Mr. Rabi Prosad Mookerjee, Adv.*

*Ms. Moumita Mondal, Adv.*

*...for the respondent*

The Court: This is an application for appointment of an arbitrator in terms of clause 25 of the General Conditions of Contract framed by the Central Public Works Department. The petitioner responded to a notice inviting tender published online by the respondent. The letter of intent dated June 23, 2011 was issued to the petitioner. An agreement was subsequently executed, bearing no. 18/CE/EE/KCD/IV/2011-12 on 20.11.2012. As per Proforma of Schedules of the above agreement, the General Conditions of Contract (GCC) 2010 of CPWD was made applicable. Clause 25 of the GCC contains an arbitration

clause. Although the actual stipulated date for completion of the contract was November 9, 2012, it is urged that the date of completion was made 30.05. 2019. Extension of time for completion of the contract was granted by the competent authority of CPWD, without imposing any liquidated damages. According to the petitioner, the price variation was wrongly calculated by the CPWD. The petitioner alleged that the delay in completion of the work was on account of non availability of site. However, upon completion of the work, a claim for the payment was raised by the petitioner. The petitioner had not been paid the entire claim. The petitioner alleges that delay was attributable to the respondent and as such there was escalation in the price for which an escalation bill was raised. Out of the total claim of Rs. 39,25,486/-, an amount of Rs. 13,80,441/- was released by the authority on 13<sup>th</sup> October, 2022. The petitioner protested. The petitioner also requested for full payment, failing which the petitioner would be constrained to request constitution of the dispute redressal committee as per clause 25. The petitioner approached the dispute redressal committee sometime in November, 2023, but the committee neither dealt with the matter nor issued any notice of hearing to the petitioner. Another letter was sent to the dispute redressal committee on December 13, 2024. The respondent replied on January 10, 2025, informing the petitioner that the request was delayed. The DRC had received information beyond 120 days from receipt of the final bill.

Mr. Mookerjee, learned advocate for the respondent submits that the belated claim which was sent to the DRC could not be adjudicated and similarly the petitioner's claim was also time barred.

Prima facie, there appears to be an arbitration clause. The notice invoking arbitration was issued on February 12, 2025, which was within the period of limitation. This application has been filed before this Court also, within the period of limitation. Whether the requirement under the contract for the contractor to approach the concerned authority/DRC within 120 days from receipt of information of the bill being made ready is a mandatory clause, and will supersede the general law of limitation to invoke arbitration, must be decided by the learned Arbitrator. What is the meaning and purport of the said clause in the given context must be decided by the learned arbitrator. The objections raised by Mr. Mookerjee are kept open.

In view of the limited scope of this court only a, prima facie, satisfaction of the existence of the arbitration clause is relevant. Moreover, the dispute redressal mechanism as stated in the contract has failed and the same is no longer legally available. Under such circumstances, keeping all points raised by Mr. Mookerjee open, the matter is referred to arbitration. Ms. Barman Roy submits that as the matter involves measurements and civil constructions, an arbitrator from the panel of the CPWD may be appointed.

Under such circumstances, the application is disposed of by appointing Mr. Sansar Pattanayak, SPA2908 1954AEEE061980 (7504213002) [sansar\\_pat@yahoo.com](mailto:sansar_pat@yahoo.com) as the arbitrator, to adjudicate 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.)

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