

ORDER

OCD-4

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/550/2025
GALLANT EQUIPMENT PRIVATE LIMITED
VS
RASHMI METALIKS LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 24th July, 2025.

Appearance:

Mr. Shuvasish Sengupta, Adv.
Mr. S. Bandhopadhyay, Adv.
Mr. Sounak Banerjee, Adv.
Ms. Anamika Karmakar, Adv.
...for petitioner.

Mr. Sanjay Mukherjee, Adv.
...for respondent.

1. This is an application for appointment of an arbitrator in terms of the goods and services order dated July 5, 2023. The clause reads as follows:-

“Dispute, Arbitration & Jurisdiction: All disputes which cannot be settled amicable under or in relation to the contract shall be resolved by reference to two arbitrators under provision of Indian Arbitration and Conciliation Act 1996. Execution of the contract shall be governed by Indian Laws and regulation and subjected to jurisdiction of Law at Kolkata.”

2. The jurisdiction of the Courts of Calcutta have been specifically agreed in the said order.
3. Mr. Sengupta submits that disputes arose when the respondent refused to accept the goods supplied. The respondent also threatened to invoke the bank guarantee upon cancellation of the order. At that stage, an

application for injunction was filed seeking restraint upon the respondent from invoking the bank guarantee. This Court had directed that there could not be any injunction on the bank guarantee, but in case the respondent sought to invoke the same, the amount should be deposited in a separate account.

4. Mr. Mukherjee submits that the bank guarantee had not been invoked. Nothing remained to be decided by the learned arbitrator. The order was terminated. The respondent had paid a sum of Rs.50 lakhs in advance which was to be refunded by the petitioner.
5. The notice invoking arbitration dated 25th April, 2025 indicates that the petitioner is ready and willing to continue with the purchase order, but the respondent had refused to accept the goods. According to the respondent, the order was terminated as the petitioner did not supply the goods upon meeting the specifications as per the order. The petitioner, however, submits that there is no official record of termination and the respondent only sought to invoke the bank guarantee without issuing any formal termination order. Mr. Mukherjee, however, submits that once the bank guarantee was sought to be invoked, that itself would amount to termination. In any event, the tenor of arguments persuades the Court to hold that there is a live dispute between the parties. With regard to the arbitrability of the dispute, the claim of the petitioner for a direction upon the respondent to allow the petitioner to perform its obligations under the order etc., are matters which must be decided by the learned arbitrator.

6. Under such circumstances, the application is allowed. All points are left open to be adjudicated before the learned arbitrator. This Court has not expressed any opinion on the merits of the claim of the petitioner.
7. This Court appoints Mr. Sourav Sen, Senior Advocate (Mobile No. 9831251607), as an 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 remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.
8. The application is disposed of.

(SHAMPA SARKAR, J.)