ORDER OCD-10

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/583/2025
MINTU KUMAR SAHA
VS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 30th July 2025.

Appearance:

Mr. Sarosij Dasgupta, Advocate
Mr. Avijit Dey, Advocate
Mr. Biswaroop Mukherjee, Advocate
…for petitioner.

Mr. Ratul Das, Advocate
Mr. Abhishek Banerjee, Advocate
Mr. Prateek Debnath, Advocate
… for respondent.

1. This is an application for appointment of an arbitrator and reference of the dispute to arbitration in a composite manner.

2. Mr. Ratul Das, learned advocate for the respondent, raises an objection to such prayer on the ground that there are six different purchase orders relating to four different projects. Each purchase order is a separate agreement. Thus, there should be seperate references. A single notice invoking arbitration will be defective. Mr. Das relies on the tax invoices and the ledger annexed by the petitioner. He submits that the petitioner also maintained separate account for each of the payments received against four different projects.

3. Mr. Sarosij Dasgupta, learned advocate for the petitioner, submits that all the purchase orders are identical and contain a similar arbitration clause. The venue of the arbitration is Kolkata in all the purchase orders. According to Mr. Dasgupta, a running account of the orders placed and payments received was maintained by the petitioner in the ledger and the payments were received in a lump sum against the dues claimed. Further, the dispute is with regard to non-payment of the outstanding dues by the respondent, which were claimed in a consolidated manner in respect of all the purchase orders taken together. Reference is made to the communications which show that the petitioner had raised its claim by clubbing the total dues payable against all the project in a composite manner and payments were also made in a composite manner.

4. The purchase orders were issued by the respondent for supply of similar nature of goods and all the purchase orders have the same arbitration clause. The venue is Kolkata in all of them. Secondly, irrespective of the fact that the purchase orders may have been issued for different projects, the petitioner has continuously raised the claim in a composite manner by its letters and emails which are available at pages 56-85 of the application. The first of such email dated January 30, 2021 indicates that a claim was raised for the transport cost for supply of the goods to Gooda site and Bellary site, to the tune of Rs.1,61,660/-. Another email dated November 13, 2021, which is at page 57 of the application, indicates that the total outstanding claimed with regard to Chaibasa Medical College, Godda Adani Power Project and Raniganj Housing Project was

Rs.60,12,553/-. Similar requests were made by letters dated January 18, 2022, February 22, 2022, April 22, 2022, May 10, 2022, July 22, 2022, September 6, 2022 and June 1, 2023. In all these letters, the dues were calculated in a consolidated manner, showing the outstanding dues against each project. The demand notices also contain claims against the purchase orders in a composite manner, enumerating the dates of the purchase order, numbers of the purchase orders, goods that were supplied, goods that were received, dates of the invoices, invoice numbers and the total amount dues. The petitioner has also relied on its ledger account and it appears that the total outstanding due from the three units was Rs.50,89,680/- and the transport cost was also calculated in a composite manner.

5. Thus, although Mr. Das's contention that there were six different purchase orders for four different projects is correct, but the dispute today is in respect of a total claim for the outstanding bills which was raised by clubbing the dues of the four projects. The arbitration clauses are similar. The venue of arbitration is Kolkata in all the purchase orders. There is nothing on record which will demonstrate that the respondent had any objection to such composite claim of the petitioner. The tax invoices were generated during delivery of the goods. In the GST regime, the invoice is a document which is necessary to claim input tax credit.

6. When the dispute raised by the petitioner is with regard to non-payment of a composite claim, which was raised by the petitioner in a composite manner and paid in a composite manner, there is no reason why a

composite reference cannot be made. The dispute can be resolved on the basis of the documents to be supplied by the parties in relation to the supply of goods and payments received. Commercial commonsense demands a composite arbitration in respect of the six purchase orders. The resolution process will be expeditious and cost effective.

7. Under such circumstances, the dispute is referred to a sole arbitrator. This Court has not gone into the merits of the matter. All objections shall be raised before the learned arbitrator.

8. This Court appoints Mr. Sankarsn Sarkar (Mobile: 9830060937), Advocate, Bar Library Club, 2nd Floor, as the learned 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.

9. The application is disposed of.

(SHAMPA SARKAR, J.)

S. Kumar/R. D. Barua