

OCD 1

ORDER SHEET
AP-COM/590/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

JAI BALAJI INDUSTRIES LIMITED
VS
TIARA INFRASTRUCTURE LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 26th August, 2025.

Appearance:
Mr. Satadeep Bhattacharya, Adv.
Ms. Rajshree Kajaria, Adv.
Mr. Uttam Sharma, Adv.
Ms. Adrita Dey, Adv.
...for the petitioner

Mr. Achintya Kumar Banerjee, Adv.
Ms. Indumouli Banerjee, Adv.

1. This is an application for appointment of an arbitrator, for adjudication of the disputes which have allegedly arisen out of letters of intent and work orders issued by the respondent in favour of the petitioner, for carrying out several works at the Jai Balaji Industries Limited, Unit No.3 and Unit No.4 at Durgapur.
2. Mr. Satadeep Bhattacharya, learned advocate for the petitioner submits that all the letters of intent and the work orders are interconnected and interlinked and as such, a composite reference should be permitted. The petitioner has made a composite claim for damages suffered on account of

alleged abandonment of work by the respondent and for other reasons. Reliance has been placed on the arbitration clause in each of the letters of intent and work orders, in support of the contention that all the work orders and the letters of intent contain a similar arbitration clause. It is further contended that the courts of Kolkata have jurisdiction over the matters.

3. Mr. Banerjee, learned advocate for the respondent submits that The Micro, Small and Medium Enterprises Development (MSMED) Act, shall prevail over the Arbitration and Conciliation Act. Two applications have been filed by the respondent before the Facilitation Council and the Council is in seisin over the matter. Under such circumstances, when orders have been passed in conciliation, the application before this Court is not maintainable. The special statute shall have an overriding effect over the Arbitration and Conciliation Act, 1996 and the arbitration clause is subservient to the rights which the MSME unit has acquired under the said MSMED Act.
4. Having considered the rival contentions of the parties, this Court finds that the letter of intent dated January 11, 2023 and the work orders dated March 2, 2023 and March 3, 2023 are in respect of works to be undertaken by the petitioner at the Jai Balaji Industries Ltd., Unit No. III. These work orders and the letter of intent are in relation to one industrial unit and the same project. Under such circumstances, a composite reference in respect of the disputes arising out of these contracts is permissible. It will save time and resources. All of them have similar arbitration clauses.

5. This Court accepts Mr. Banerjee's contention to the extent that the letter of intent dated March 23, 2023, is in respect of a separate project (unit IV), and as such, the claims arising out of the said letter of intent cannot be decided along with the other claims arising out of the project at unit No. III. The petitioner shall take appropriate steps in respect of the claims under the said of LOI, by issuing a separate notice involving arbitration.
6. With regard to the contention of Mr. Banerjee that, during the pendency of the proceeding before the Facilitation Council, the arbitral Court should refuse to refer the dispute, this Court is of the view that the question touches the issue of jurisdiction of the learned Arbitrator and arbitrability of the dispute. The specific contention of Mr. Banerjee is that, the respondent had approached the Council for adjudication of a money claim raised by it. In case of failure of the conciliation, the petitioner will always be at liberty to file a counterclaim before the Council. Section 18(3) of the MSMED Act, provides that once conciliation fails and is terminated, the proceeding thereafter shall be governed by the provisions of the Arbitration and Conciliation Act, 1996.
7. Whether the claims of the petitioner will cover the dispute to be adjudicated under the MSMED Act or not, must be decided by the learned Arbitrator. Whether the jurisdiction of the Council will extend to the adjudication of the claim for damages made by the petitioner, is also a matter which should be decided by the Arbitrator. Objections with regard to the jurisdiction of the learned Arbitrator and arbitrability of the dispute, can be

raised by the respondent by filing an application under Section 16 of the Arbitration and Conciliation Act, 1996.

8. The relevant provisions of the MSMED Act, are quoted below:-

“15. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.-Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due.- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

18. Reference to Micro and small Enterprises Facilitation Council.-(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

9. The dispute before the Council is restricted to the amount due as per Section 17 of MSMED Act.

10. A referral Court is only required to satisfy itself as to the existence of an arbitration clause and to ensure that deadwood claims are weeded out. A party should not be unnecessarily dragged into a frivolous adjudicatory process.
11. Under such circumstances, the Court refers the disputes arising out of the LOI dated January 11, 2023, the work order dated March 2, 2023 and the work order dated March 3, 2023 to a composite arbitration and appoints Mr. Nayan Chand Bihani, learned Senior Advocate, as the arbitrator, to arbitrate upon the disputes between the parties. The invocation is restricted to the above referred LOI and work orders. 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.
12. With regard to the claims under the LOI dated March 23, 2023, the petitioner shall take appropriate steps.
13. The application is disposed of.