

ORDER SHEET
AP-COM/597/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

H P ISPAT PRIVATE LIMITED
VS
ISMAIL HOQUE

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 18th August, 2025.

Appearance:
Mr. Debraj Sahu, Adv.
Mr. Hareram Singh, Adv.
Mr. Saptarshi Raja Chatterjee, Adv.
. . .for the petitioner.

Mr. Sanjay Saha, Adv.
Mr. L.R. Mandal, Adv.
Mr. Probal Sarkar, Adv.
Ms. S.K. Kiran, Adv.
. . .for the respondent.

The Court:

1. Affidavit of service filed in Court is taken on record.
2. This is an application for appointment of an Arbitrator.
3. The petitioner contends that the parties entered into a business transaction. The respondent expressed an intention to take the dealership of the TMT Bars and other metallic products from the petitioner. The petitioner claims to be the manufacturer and supplier of TMT Bars.

4. It is contended that the petitioner supplied TMT Bars at regular intervals to M/s. Hoque Hardware, a proprietorship concern of the respondent and the aggregate value of the goods supplied was Rs.77,51,762/-. Invoices were also raised by the respondent. Copies of the invoices have been annexed to the application.
5. It is submitted that the invoices contained a named Arbitrator. It is further submitted that another agreement was entered into in the form of a memorandum of understanding which also contained an Arbitration Clause. The said agreement was executed on November 11, 2023 with regard to non-payment of Rs.23,65,472/-, i.e. the outstanding dues from the total amount of Rs. 77,51,762/-.
6. Mr. Saha, learned advocate for the respondent submits that the invoices themselves contained an arbitration clause and there was no necessity for the parties to enter into a subsequent agreement. Learned Advocate denied execution of the agreement. He submits that in the course of business, signed letter heads were handed over to the petitioner and the petitioner manufactured the MOU.
7. It is further submitted that the respondent can prove that when the agreement was executed, he was not present at the registered office of the petitioner. Thus, he prays for an opportunity to file an affidavit to bring on record these aspects.
8. In my opinion, the objections raised by Mr. Saha are triable issues and must be proved. Evidence should be adduced. Whether the respondent was present at the office of the petitioner in order to sign the application, or whether the agreement was typed on a pre signed letter

head of the respondent which the respondent handed over to the petitioner in the course of business, cannot be decided by the referral court.

9. The validity of the agreement must be decided by the Arbitrator. Prima facie, it appears that although the invoices contained an arbitration clause, the subsequent agreement was entered into by the parties and the mode and manner of payment of the due of Rs.23,65,472/-, was laid down. Each of the invoices contained an arbitration clause in relation to the goods supplied under the said invoice. However, when arbitration was invoked, reference was made to the agreement dated November 11, 2023 because, the petitioner was claiming the balance payment as per the terms and conditions agreed upon by the parties in the said agreement. According to the petitioner, upon delivery of goods and receipt of part payment, a sum of Rs. 23,65,472/- was outstanding. The subsequent agreement was entered into, providing the process by which the dues would be liquidated. The parties agreed that any dispute arising out of the said agreement, would be referred to arbitration.
10. The issue of novation or supersession of the invoices and the arbitration clauses, by the subsequent memorandum of understanding /agreement, is also a matter which has to be decided by the learned Arbitrator.
11. Under such circumstances, the application is allowed. Mr. Saha also submits that the petitioner owes substantial money to the respondent. All the objections raised by Mr. Saha are to be gone into by the learned Arbitrator. The referral Court is only to, prima facie, examine the

existence of the arbitration clause. This Court finds that there is an Arbitration Clause in the agreement dated November 11, 2023 and the mode and manner of payment of the remaining amount has been specified in the said agreement.

12. Under such circumstances, the Court appoints Mr. Farhan Gaffar, Advocate [Mobile No. 9830179148], as the Arbitrator, to arbitrate upon the dispute between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
13. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Arbitration and Conciliation Act.
14. AP-COM 597 of 2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)