

OCD 8

ORDER SHEET
AP-COM/662/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

LARSEN AND TOUBRO LIMITED
VS
PUBLIC WORKS DEPARTMENT GOVERNMENT OF
WEST BENGAL

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 22nd September, 2025.

Appearance:
Mr. Sakabda Roy, Adv.
Mr. Souvik Ghosh, Adv.
. . .for the petitioner.

Ms. Noelle Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Arindam Mandal, Adv.
Mr. Ritoban Sarkar, Adv.
Ms. Swagata Ghosh, Adv.
. . .for the respondent.

The Court:

1. This is an application for appointment of a learned Arbitrator.
2. The dispute arose out of an agreement dated June 5, 2020. The project was for reconstruction of a four lane Tallah ROB (Hemanta Setu) adjacent to Tallah Railway Station on Barrackpore Trunk Road, Kolkata, West Bengal.
3. The petitioner had been awarded the work by the respondent. The petitioner claims to have completed the work, but it is alleged that the monetary claims of the petitioner were not paid. Consequently, a

dispute arose. It is alleged that there are several differences between the parties, apart from unpaid bills.

4. Article 26.3 of the contract agreement contains the arbitration clause. Article 26.2 prescribes a pre-arbitral procedure of conciliation. The provisions are quoted below:

“26.2 Conciliation:

Step-1:- Authority’s Engineer to act as Conciliator:

In the event of any Dispute between the Parties, either Party may call upon the Authority’s Engineer, or such other person as the Parties may mutually agree upon (the “Conciliator”) to mediate and assist the Parties in arriving at an amicable settlement thereof.

Step-2:- Departmental Dispute Redressal Committee to act as Conciliator.

If amicable settlement done by Authority’s Engineer in Step-1 of clause 26.2 is found to be unacceptable by any party, he/she shall promptly within 15 days request the Chairman of the Departmental Dispute Redressal Committee, in writing, for written instruction or decision. Thereupon, the Dispute Redressal Committee upon hearing both the parties shall give its written instruction or decision within a period of three months from the date of receipt of the letter.

26.3 Arbitration:

(i) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally settled by arbitration in accordance with the rules of arbitration.

(ii) The Parties expressly agree as under in case of arbitration of disputes:

(c) In case of a dispute involving claim value of more than INR 10 Crore (INR ten crore), the same shall be referred to an Arbitral Tribunal comprising 3 (three) Arbitrators. Authority shall within 60 (sixty) days decide and intimate the name of one co-Arbitrator to the Contractor. Similarly the Contractor shall within 60 (sixty) days decide and intimate the name of one co-Arbitrator to the Authority. These two Co-Arbitrators shall jointly decide and intimate the name of Presiding Arbitrator to the parties within 30 (thirty days). The Dispute shall be settled in accordance with the rules of Arbitration.

(d) The venue of arbitration shall be Kolkata and the language of arbitration proceedings shall be English.”

5. As per the first step, the petitioner was to approach the engineer for an amicable settlement, failing which the dispute was to be referred to a Departmental Dispute Redressal Committee, which was to act as a conciliator. Failing such conciliation by the Committee, the dispute was to be referred to Arbitration under Article 26.3.
6. It appears from the records that the petitioner has exhausted the pre-arbitral mechanism for redressal of the grievances. The petitioner invoked arbitration on May 12, 2025 and nominated the Hon'ble Justice

Satish Agnihotri (retired) as its nominee. The respondent kept silent. Hence, the petitioner has approached this Court.

7. Having considered the records, it appears to the Court that the pre-arbitral procedure prescribed in the contract failed and as such, the application is maintainable and accordingly allowed.
8. The objections taken by the respondent, can be raised before the learned Arbitral Tribunal. The arbitration clause provides for constitution of a three member Tribunal. Parties are to appoint their nominees and the two learned Arbitrators are to nominate the presiding Arbitrator. The mechanism has failed. The petitioner has already nominated Hon'ble Justice (retired) Satish Agnihotri as its nominee. Hon'ble Justice Sanjib Banerjee, former Chief Justice of Madras and Meghalaya High Court shall act as the respondent's nominee and The Hon'ble Justice Indira Banerjee, former Judge of the Hon'ble Supreme Court of India, shall act as the presiding Arbitrator.
9. All points are left open, for decision by the learned Arbitral Tribunal.
10. The appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
11. The learned Tribunal shall fix the remuneration as per the Schedule of the Act.
12. AP-COM/662/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)