

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/692/2025
SIMOCO TELECOMMUNICATIONS SOUTH ASIA LIMITED
VS
WEST BENGAL ELECTRONICS INDUSTRY
DEVELOPMENT CORPORATION LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 13th November, 2025.

Appearance:
Mr. Krishnaraj Thaker, Sr. Adv.
Ms. Shabana Khatun, Adv.
Ms. Sneha Singhania, Adv. ...for petitioner.

Mr. Anirban Ray, Sr. Adv.
Mr. Piyush Agarwal, Adv.
Ms. Shirangi Thard, Adv. ...for respondent.

1. This is an application for appointment of an arbitral tribunal in terms of clause 13 of the Memorandum of Understanding dated December 2, 2022.

2. Clause 13 provides that in the event of any dispute between the parties, the parties shall try to resolve the same by negotiation and if mutual resolution cannot be reached within thirty days from commencement of such negotiation, the first part, that is the respondent, shall have the right to refer to the matter to the Principal Secretary, Department of IT & E, Government of West Bengal to settle the disputes or the breach. The clause further provides that the parties agreed that the opinion of the Principal Secretary or its duly authorised nominee would be final and binding. In the alternative, either of the parties were free to refer the dispute to arbitration under the Arbitration and Conciliation Act, 1996 for adjudication by three Arbitrators; one arbitrator shall be appointed by the first part, one by the second part and the third arbitrator shall be appointed by the Arbitrators so appointed. The venue

of arbitration shall be Kolkata. Arbitration proceeding shall be conducted in English and award passed by the final and binding.

3. Mr. Thaker, learned senior counsel appearing for the petitioner submits that the disputes had arisen as the payments were not made as per the Memorandum of Understanding. He refers to the notice invoking arbitration where the quantum of the claim has been specified at more than Rs. 33 crores.

4. Mr. Ray, learned senior counsel appearing for the respondent submits that the pleadings do not indicate how the matter can be filed in the commercial division of this court and how this court has the jurisdiction to entertain the application. Mr. Ray refers to the pleadings and the nature of work to be rendered by the petitioner. He further submits that apart from supply, the work relates to installation and commission and such works do not come within the definition of a commercial dispute. Such work was not supply of goods and service under clause 2(1)(c)(xviii) of the Commercial Courts Act, 2015.

5. According to Mr. Ray, without such averments in the application, this court should not entertain the application.

6. I have considered the contentions of the parties and I find that the parties entered into a Memorandum of Understanding and decided to work in the following areas :

- a. LED lighting products;
- b. Solar lighting system;
- c. Installation and maintenance of Solar Power Plant, etc.

7. The role and responsibilities of the second part have been enumerated under clause 3 of the Memorandum of Understanding. Clause 3(d) provides that the second part, that is, the petitioner shall ensure timely implementation of the LED lighting or any of the products mentioned in the areas of work including supply, installation and commissioning as per the

agreed schedule in the DPR provided by the customer to the first part. Provision shall also be made available for dimming LED street lights. Clause 3(e) provides that the second part shall carry out the timely operation and maintenance of the LED street light installed under the project, during the project period. The disposal of the old street lights, the operation of the lights including supply of appropriate pole cabling, phase wire work, fuse box, surge protector, earthing arrangements, clamps, fasteners, brackets with arm, etc. were within the scope of supply and maintenance to be provided by the petitioner.

8. Under such circumstances, this court finds that the works agreed to be performed by the petitioner included supply, installation and commissioning of the lighting system. The entire operation and maintenance was also to be done by the petitioner, which included not only supply of goods but also extension of services to ensure smooth operation of the same.

9. Under such circumstances, this court does not have any hesitation to hold that the dispute is a commercial dispute of a specified value. The respondent has other allegations on the quality of the service rendered and the goods supplied. These issues are not to be decided by this court. Each party has to prove the breach, on the materials to be adduced in evidence.

10. Under such circumstances, the application is allowed and all the issues raised by Mr. Ray including the issue of arbitrability, admissibility, limitation etc. are kept open to be decided by the arbitral tribunal.

11. The petitioner has already nominated Justice Aloke Chakraborti (+91 9831644202), former Judge of this Hon'ble Court as its nominee. The respondent has nominated Justice Jyotirmay Bhattacharya (+91 9830929738), former Chief Justice of this Hon'ble Court as its nominee and Justice Asok Kumar Ganguly (+91 9674389222), former Judge of the Hon'ble Supreme Court, shall act as the third and presiding Arbitrator.

12. This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

13. The learned Arbitrators shall fix their remuneration in terms of the Schedule of the Act.

14. AP-COM/692/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

S. Mandi/pkd.