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

AP-COM/916/2025
TWAMEV CONSTRUCTION AND
INFRASTRUCTURE LIMITED (FORMERLY KNOWN
AS TANTIA CONSTRUCTIONS LIMITED)
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 11th December, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv. ...for petitioner.

Mr. Altamash Alim, Adv. ...for respondents.

The Court: Affidavit of service is taken on record.

Mr. Alim appears on behalf of the respondent nos.1 and 2. The State of West Bengal is not before the court, despite service. Primarily, the disputes arose between the petitioner and the respondent nos.1 and 2. Thus, the matter proceeds.

The petitioner company, formerly known as Tantia Construction Limited claims to be an infrastructure development company. The respondents awarded a sewerage and drainage project to Tantia Construction (in short TC) under Contract Package No.KEIIP/NCB/TR-2/SD10/2015-16 for Rs.76,02,79,999.80. The name of the company had been changed from TANTIA CONSTRUCTIONS LTD to TWAMEV CONSTRUCTION AND INFRASTRUCTURE LIMITED with effect from November 27, 2024. The contract was awarded pursuant to a tender process. The respondent no.2, by a letter dated October 17, 2016, accepted the bid and final proposal of TC. TC was asked to provide performance security in accordance with sub-clause 4.2 of the Conditions of Contract and clause 42.1 of the Instructions to bidders. The petitioner contends that TC mobilised funds for such project and

deposited more than Rs.10 lakhs as retention money. Performance guarantee to the tune of Rs.7,60,28,000/- which was valid upto November, 2020, was also furnished by the petitioner. The petitioner contends that TC completed 90% of the work. The RA bill nos.1 and 2 were duly paid and the third and fourth bills were also received by the respondents, without any objection. The petitioner submits that the claim as of now is more than Rs.10 crores.

According to the petitioner, due to hindrance at the site, delay occurred and all on a sudden the respondents terminated the contract by a letter issued to TC on August 17, 2018, upon invoking clauses 15.2 and 15.4 of the GCC, without settling the dues. The respondents also invoked the Performance Guarantee sometime in August, 2018.

It is averred that, an application under Insolvency and Bankruptcy code 2016 was filed before the national Company Law Tribunal, Kolkata Bench by State Bank of India and Others for initiation of corporate insolvency resolution process in the year 2018. Subsequently, upon hearing the said application for corporate insolvency, by order dated March 13, 2019 the National Company Law tribunal, Kolkata Bench, was pleased to admit the Corporate Debtor (TC) in the corporate insolvency resolution process and accordingly an interim resolution professional was appointed. Thereafter the company's new committee of creditors was formed and subsequently, on February 24, 2020, EDCL infrastructure Limited and US Constructions Private Limited were confirmed as the successful resolution applicant.

According to the petitioner, the respondents received excess amount of more than Rs.5 crores. The allegations against the respondents pertain to non-fulfillment of the contractual obligations, illegal invocation of Bank Guarantee and unjust enrichment. TC filed a writ petition before this court on such allegations and disputes. The writ petition was disposed of and

the parties were directed to take recourse to arbitration in terms of clause 20.6 of the GCC, which is quoted below :

“Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the BD's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- a. if the Contract is with foreign contractors,*
- (i) for contracts financed by all participating Banks except under sub-paragraph (a)(ii) below:*

international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution, or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration, by one or more arbitrators appointed in accordance with said arbitration rules.

- (ii) for contracts financed by the Asian Development Bank:*

international arbitration (1) with proceedings administered by the arbitration institution specified in the Contract Data and conducted under the rules of arbitration of such institution unless it is specified in the Contract Data that the arbitration shall be conducted under the rules of the United Nations Commission on International Trade Law (UNCITRAL) and if UNCITRAL Rules are so specified then the named arbitration institution shall be the appointing authority and shall administer the arbitration): or (2) if an arbitration institution is not specified in the Contract Data, with proceedings administered by the Singapore International Arbitration Centre (SIAC) and conducted under the SIAC Rules, by one or more arbitrators appointed in accordance with the said arbitration rules.

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works."

It is not in dispute that the GCC has been made applicable to the contract entered into between the parties. As per the GCC, in case of contracts with domestic contractors, the arbitration shall be guided by the laws of the Employer's country, i.e., the Arbitration and Conciliation Act, 1996. TC invoked the arbitration clause by a notice issued by a learned Advocate. The petitioner claims to have stepped into the shoes of TC.

All objection with regard to jurisdiction, arbitrability, maintainability of the claims, limitation, locus of the petitioner to invoke arbitration in the facts narrated hereinabove, are left open, to be raised before the learned Arbitrator.

The application is allowed, by referring the dispute to a sole arbitrator.

Under such circumstances, The Hon'ble Justice T.S. Sivagnanam, former Chief Justice of Calcutta High Court, is appointed as the learned Arbitrator, to resolve the disputes between the parties.

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

The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

AP-COM/916/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

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