

OCD-3

AP-COM/742/2024
[Old case no. AP/636/2022]
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SCHOOLNET INDIA LIMITED
VS
M/S. PLANET INFRASTRUCTURE MANAGEMENT PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 20th January, 2025.

Appearance:

Mr. Souradip Banerjee, Adv.

Mr. Rajib Ghosh, Adv.

. . .for the petitioner.

Mr. Ritoban Sarkar, Adv.

Mr. Debanjan Ghosh, Adv.

. . .for the respondents.

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996.

The petitioner prays for appointment of an Arbitrator on the basis of Clause 30 of the purchase order dated June 30, 2020. According to the petitioner, the goods were delivered, but part payment was released. The petitioner was entitled to an amount of Rs.69,16,500/- with interest at the rate of Rs.24% per annum from the date on which the payment fell due. The petitioner contends to have approached the authority to liquidate the entire payment. The respondent did not take any steps.

Under such circumstances, the petitioner invoked the arbitration clause by a notice dated April 25, 2022. In the said notice, the petitioner also nominated a

learned advocate of this Court as the sole Arbitrator. The respondent did not take any step pursuant to the notice invoking arbitration. Hence, this application has been filed before this Court.

The matter is being heard on affidavits. Mr. Ritoban Sarkar learned advocate for the respondent has raised a question with regard to the maintainability of the application before this Court, on the ground of lack of jurisdiction. It is submitted that the petitioner had already availed of remedy before the learned Civil Court at Dhanbad. According to Mr. Sarkar, the cause of action as pleaded in the notice invoking arbitration and in the plaint, were similar. Thus, the petitioner could not run parallel proceedings before the Commercial Court at Dhanbad and another before the learned Arbitrator, to be appointed by this Court, in terms of Clause 30 of the purchase order. He has relied on a decision of the Delhi High Court in the matter of *Aarka Sports Management Pvt. Ltd. Versus Kalsi Buildcon Pvt. Ltd. reported in 2020 SCC online Del 2077*. According to Mr. Sarkar, the cause of action arose in Dhanbad. The goods were to be delivered at Dhanbad. The denial of payment, if any, was also at Dhanbad. Under such circumstances, this Court cannot pass any order by appointing a learned Arbitrator.

Heard the parties. Paragraph 15 of the application mentions that the agreement was executed at Kolkata and both the parties carry on their respective business in Kolkata. This Court finds from the purchase order that the registered office of the respondent is at Park Street, Kolkata 16, which is within the Ordinary Original Jurisdiction of this Court. Thus, the decision of *Aarka Sports Management Pvt. Ltd. (supra)* does not come to the aid of the respondent

and paragraph 27 of the said decision clarifies the position that the competent Court to entertain an application under Section 11 of the said Act, in the absence of any seat or venue agreed to between the parties, would be the Court as defined in Section 2(1)(e) of the Act read with Section 16 to 20 of the Code of Civil Procedure. Section 20 of the Code of Civil Procedure reads as follows:

“Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.”

Under such circumstances, the objection with regard to the jurisdiction of this Court to entertain this application and appoint an Arbitrator, is not accepted. The second objection with regard to the arbitrability of the issues in view of the pending civil suit arising out of the said purchase order as raised by Mr. Sarkar, can be raised before the learned Arbitrator. The Arbitrator is

empowered by law to rule on its own jurisdiction and also decide arbitrability of the issues involved.

Under such circumstances, the respondent is at liberty to raise all objections at the appropriate stage. All points on the merits of the claim and objections of the respondent, are kept open to be decided by the learned Arbitrator.

Under such circumstances, the Court appoints Ms. Suparna Mukherjee [Mob No. 9830093370], learned Senior Advocate, Bar Library Club as the Arbitrator, to arbitrate the dispute. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix her own remuneration as per the provisions of the Arbitration and Conciliation Act.

AP-COM/742/2024 [Old case no. AP/636/2022] is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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