

ORDER SHEET
AP-COM/1079/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SOMANY CERAMICS LIMITED
VS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 20th March, 2025.

Appearance:
Mr. Soumalya Ganguli, Adv.
Mr. A. Sharma, Adv.
...for the petitioner

Mr. Abhishek Banerjee, Adv.
Mr. Sitikantha Mitra, Adv.
...for the respondent

The Court:

1. The respondent does not want to file any opposition and wants to argue on the point of law.
2. Mr. Banerjee, has raised the question of maintainability of the application under Section 11 of the Arbitration and Conciliation Act, 1996 hereinafter referred to as the said Act, on the ground that a consolidated claim in respect of three different purchase orders pertaining to three different construction sites of the respondent was not permissible in law. Reference was made to the decision of the

Hon'ble Apex Court in the matter of *DURO FELGUERA, S.A. -VS.- GANGAVARAM PORT LIMITED* reported at (2017) 9 SCC 729.

3. The petitioner had been asked to clarify the position as to whether, at any point of time the respondent had treated the said purchase orders to be a part of a single transaction and made payments by maintaining an open and running account in a consolidated manner. The supplementary affidavit has been filed clarifying the position and this Court finds that the payments were made severally. The petitioner has been candid and fair to the court and submits that reference may be restricted to only the claim in respect of the Gurgaon project, that is, purchase order No.PO28252825/160529000001.
4. This matter is now restricted to the prayer for reference in respect of the purchase order dated 29th May, 2016. The Court does not find that the invocation of the arbitration clause in respect of the said purchase order is ex-facie time barred. The order of the Hon'ble Apex Court with regard to exclusion of the period between March 15, 2020 and February 28, 2022 appears to be applicable in computing the period of limitation for invocation of the arbitration clause. However, the objection on the point of limitation shall be finally adjudicated by the learned Arbitrator.
5. With regard to the other contentions of Mr. Banerjee that the notice invoking arbitration does not clearly indicate the exact claim arising out of the Gurgaon project and as such, the consolidated application should not be accepted, is considered.

6. The notice invoking arbitration is not to be technically construed in order to defeat the purpose behind incorporation of an arbitration clause in the purchase order. Section 21 of the Arbitration and Conciliation Act provides that unless otherwise agreed between the parties, the arbitral proceedings in respect of a particular dispute commences on the date on which a request for the dispute to be referred to arbitration, is received by the respondent. Thus, the fact that the petitioner commenced the arbitration proceeding by issuing the notice, is not in dispute. The fact that the claim in the Gurgaon project is an outstanding claim, is one of the disputes raised by the petitioner. The intention to arbitrate is also available. The petitioner fairly states that the prayer of consolidated reference is withdrawn and the reference shall be made only in respect of the Gurgaon project. The notice invoking arbitration mentions the bills in respect of the Gurgaon project and other issues arising from the Gurgaon project which were also in the nature of claims, as enumerated in the notice.
7. However, Mr. Banerjee has pointed out to the Court that in the supplementary affidavit, the petitioner has claimed a higher amount than what was mentioned in the notice invoking arbitration. The reference court is not required to go deeper into the this issue as the arbitrability and admissibility of the claim, will to be decided by the learned arbitrator.
8. This court is satisfied that there is an arbitration clause in the purchaser order for the Gurgaon project.

9. Under such circumstances, the application is allowed.
10. The reference of the dispute shall be restricted to the purchase order in respect of the Gurgaon project dated May 29, 2016. The court does not make any comment with regard to the claim in respect of the other purchase orders.
11. Accordingly, the application is disposed of by referring the dispute to arbitration.
12. The Court appoints Mr. Ritoban Sarkar, learned Advocate, Bar Library Club, as the learned Arbitrator, to arbitrate the dispute. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
13. The learned Arbitrator shall fix the remuneration as per the Schedule of the Act.
14. AP-COM/1079/2024 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)