

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(COMMERCIAL DIVISION)

AP/751/2022

JOYRATH PROJECTS PRIVATE LIMITED
VS
SIMPLEX INFRASTRUCTURES LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 23rd June, 2025

Appearance:-
Mr. Chayan Gupta, Adv.
Mr. Arnab Sardar, Adv.
Mr. Sayan Ganguly, Adv.
... for petitioner.

Mr. Debraj Sahoo, Adv.
Mr. Sitikantha Mitra, Adv.
... for respondent.

The Court :- This is application for appointment of a learned Arbitrator. The application was filed on November 4, 2022. The dispute relates to a Work Order bearing no.WO26482648/180501000003, dated September 1, 2020. The subject work was in relation to carrying out and maintenance of Launching Girder for third party testing, to facilitate launching of segments related to construction of elevated metro viaduct at Joka Mominpur Metro Viaduct Project (Pkg-II).

The petitioner contends that the arbitration agreement is under clause 14 of the Work Order. The same is quoted below :

"In the event of any difference or dispute arising out of or in connection with this work order, the same shall be first amicably

settled by mutual dialogue. If the parties fail to settle their difference or dispute arising out of or in connection with this work order (including interpretation of the terms thereof), the same shall be referred to arbitration. The Arbitration proceedings shall be conducted by a single Arbitrator appointed by the Company Secretary of Simplex Infrastructures Ltd., and the award/decision of such arbitrator shall be final and binding upon both the parties. The venue of the arbitration shall be Kolkata. However, the work shall not be stopped during the pendency of the proceedings and it shall be ensured that such work is proceeded uninterruptedly.”

Mr. Chayan Gupta, learned Advocate for the petitioner submits that pursuant to the work done, bills were raised. Bills were also received lastly sometime in October, 2021. Mr. Gupta refers to the bank statements, in support of his contention that the respondent had partially paid the bills that were raised, pursuant to the work done under the said work order. The dispute arises out of additional works which were completed by the petitioner at the instruction of the respondent, but the amount claimed remained unpaid. The said amount is Rs. 5,93,007.79/-. Bills were paid on ad-hoc basis, and lastly paid on October 9, 2021 for Rs. 2,00,191/-. According to the petitioner, the amount of Rs. 5,93,007.79/-, remained outstanding since long. A notice invoking arbitration was issued.

The averments in the application indicate that despite numerous requests since November, 2021, the respondent failed and neglected to pay the outstanding amount that was claimed. The petitioner invoked arbitration by a letter dated July 22, 2022. The petitioner nominated a learned Advocate

of the High Court to act as the learned Arbitrator. The respondent did not take any steps. Hence, the application was filed.

Mr. Sahoo, learned Advocate for the respondent submits that the Work Order relied upon by the petitioner did not relate to the bills raised. He refers to the date of the Work Order mentioned in the invoices. According to Mr. Sahoo, although the Work Order was dated September 1, 2020, the date mentioned in the invoices was August 1, 2020. This argument has been advanced in support of the contention that the Work Order in respect of which the arbitration clause was invoked, was not acted upon between the parties. Mr. Sahoo refers to the parameters mentioned in the said invoices to distinguish that the components mentioned in the invoices like rates, labour charges etc. did not tally with those in the Work Order.

Mr. Gupta has relied on the Letter of Intent and the contents thereof, to support his case. It is submitted that the respondent cannot deny the issuance of the Letter of Intent dated 17th July, 2020. The e-mail issued by one Manab Dutta of Simplex Infrastructures Limited on July 17, 2020, has been relied upon.

Mr. Sahoo next contends that the petitioner was mandated by the agreement, to first approach the respondent, for an amicable settlement. Thus, this application is premature.

Having considered the rival contentions of the parties, this Court finds that existence of a binding arbitration agreement is not in dispute. The law does not require the arbitration agreement to be in any particular form, so long as the same is in writing and acted upon by the parties. The Work

Order is an agreement of such nature, which contains an arbitration clause. The same was issued from the office of Simplex Infrastructures Limited at Shakespeare Sarani, Kolkata.

It is not the respondent's case that the work order was never issued. When the respondent has issued the work order and the petitioner accepts the same, this Court is of the view that the parties intended to be bound by an arbitration agreement and agreed to refer their disputes to a sole arbitrator. The bills were raised on the basis of the work done under the said work order. The invoices mentioned an incorrect date of the work order, but the number of the work order is correct. The court finds that the other components, viz., rates, quantity etc. specified in the work order tallies with those in the invoices.

With regard to the allegation that the application is premature, this Court is of the view that even if the expression "shall" is used in the clause requiring the parties to amicably settle the dispute, a provision for amicable settlement can never be a mandatory clause. Parties cannot be forced to settle a dispute. It has to be a voluntary action. Secondly, there are averments which indicate that the petitioner had time and again approached the respondent for payment of money. The respondent did not take any step. The application for appointment of arbitrator was filed sometime in 2022, but in the interregnum, the respondent did not call upon the petitioner to try and settle the disputes. There does not appear to be any such intention.

Today, objections have been raised on various grounds, which persuades this court to, prima facie, hold that the respondent was never

willing to settle the dispute amicably. Thus, a satisfaction as to the existence of an arbitration clause is sufficient, for the referral court to refer the dispute to arbitration.

The question of jurisdiction of the learned Arbitrator, arbitrability of the dispute, admissibility of the claim etc., can be raised before the learned Arbitrator.

The application, AP/751/2022, is disposed of by referring the dispute to arbitration.

Under such circumstances, the application AP No. 751 of 2022 is allowed and disposed of by referring the disputes to arbitration of the sole Arbitrator Mr. Jayanta Sengupta, learned Advocate, Mobile No. 9231500518.

The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)