

ORDER SHEET
AP/752/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

JOYRATH PROJECTS PVT LTD
VS
SIMPLEX INFRASTRUCTURES LTD

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 26th June, 2025.

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

Mr. Debraj Sahu, Adv.
Mr. Sitikantha Mitra, Adv.
. . . for the respondent.

The Court:

1. This is an application for appointment of an Arbitrator in terms of Clause 23 of the work order dated December 1, 2017 and August 1, 2018. The work orders contain a similar arbitration Clause and the venue of arbitration is Kolkata.
2. The petitioner contends that pursuant to the work orders, invoices were raised. Petitioner relies on the no dues-cum-clearance certificate of the sub-contractor. Tax invoices which were raised and allegedly served upon the respondent have been annexed. Petitioner claims payment of outstanding dues on the basis of the said tax invoices. The petitioner relies upon bank statements which shows that lastly on November 23, 2020, an amount of Rs. 2 lakhs was transmitted by the respondent.

According to the petitioner, Rs. 30 lakhs was still outstanding in respect of the Cochin Project and by a letter dated March 12, 2021, the said amount was claimed. By an e-mail dated March 22, 2021, the representative of the respondent informed the petitioner that the bills were checked and found to be correct. Payments were not released. The petitioner invoked arbitration on July 22, 2022 in respect of the Work Order No. WO32253225/ 171201000001 dated 1st December, 2017 and the work Order for hiring equipment being work Order No. WH32253225/ 180801000001 dated 1st August, 2018.

3. According to the petitioner, the work orders were connected. Payments were raised in a composite manner and also released in a composite manner. Therefore, the two work orders could not be treated as separate and distinct, but they were interrelated and interconnected. The release of funds would also indicate that composite payments were made. The parties had treated the issue of payment, in a composite manner.
4. Mr. Sahu, learned advocate for the respondent, submits that the work order dated December 1, 2017 was separate and distinct from the work order dated August 1, 2018. Hence, composite reference should not be made. Secondly, Mr. Sahu submits that the invoices in respect of which payments were adjusted had not been raised in respect of the subject work orders. Reliance has been placed on the decision of a Coordinate Bench in the matter of *Gantrex India Crane Rails Pvt. Ltd versus Simplex Infrastructure Ltd. & Ors.* passed in AP No.86 of 2023 dated 19th April, 2023.

5. It is submitted that a composite reference should not be allowed and the notice invoking arbitration should be held to be defective. By a single notice, the petitioner had invoked the arbitration clauses in two separate and distinct work orders. Learned Arbitrator submitted that all payments had been made.
6. The fact that the work order dated December 1, 2017 contains an Arbitration Clause is not in dispute. Parties had agreed to settle the dispute amicably, failing which the dispute was to be referred to arbitration. The work order dated August 1, 2018 has a different number but it refers to the same contract C3225. It also has a similar arbitration clause.
7. The invoices indicate that the work orders arose out of the Cochin Project and in continuation of the said project, such work orders were issued. Both of them contained similar arbitration clauses although the works to be executed under the said work orders may have varied. The bank statement indicates that payments were made in a lump sum.
8. It also appears from the e-mail and the letters exchanged that the petitioner had claimed Rs.30 lakhs as the amount due and payable under the work orders/supplementary work orders issued in respect of contract no.C3225 and the respondent by an e-mail informed the petitioner that the bills were checked and found to be correct. Mr. Sahu's contention that nothing is due and payable or that the invoices in respect of which the petitioner allegedly claimed outstanding dues, were not connected to the work orders referred to in the notice invoking

arbitration, are matters of evidence, which would have to be gone into by the learned Arbitrator.

9. Prima facie, this Court finds that both the work orders which have been mentioned in the notice invoking arbitration of December 1, 2017 and August 1, 2018 arise out of the same project. The e-mails which have been exchanged between the parties, do indicate that the parties had been negotiating with regard to the payment of outstanding dues in a composite manner.
10. Under such circumstances, this Court holds that a composite reference can be allowed for the sake of convenience and the issue of admissibility of the claim, arbitrability of the dispute etc., shall be decided by the learned Arbitrator. The work orders are as follows:-

Work Order No.	Date
Work Order No. WO32253225/171201000001.	1 st December, 2017
Supplementary Work Order for hiring equipment being Work Order No. WH32253225/180801000001.	1 st August, 2018

11. The decision in Gantrex India Crane (Supra) does not appear to be applicable at this stage. The learned Arbitrator while shall decide whether the money as per the invoices had been paid or not or whether the dues claimed pertained to the subject work orders. From the documents before this Court, prima facie, it appears that the work

orders dated December 1, 2017 and August 1, 2018 arise out of the Cochin Project.

12. A composite reference, thus, would be time saving, cost effective and convenient.
13. The application is allowed. The referral Court is not required to conduct a mini trial in order to decide on arbitrability, admissibility or limitation. All such issues shall be raised at the appropriate stage.
14. Under such circumstances, the Court appoints Mr. Jayanta Sengupta, learned Advocate, [Mobile No.9231500518] as the Arbitrator, to arbitrate upon the dispute between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
15. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Arbitration and Conciliation Act.
16. AP/752/2022 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

Sp/