

OCD 10

ORDER SHEET
AP-COM/39/2026
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

INDUS TOWERS LTD.
VS
MASUD ALI AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th January, 2026.

Appearance:
Mr. Sakya Sen, Sr. Adv.
Mr. Sunil Gupta, Adv.
Mr. Rishav Deb Barman, Adv.
. . .for the petitioner.

The Court:

1. Affidavit of service filed in Court is taken on record.
2. Despite service, none appears on behalf of the respondents. It appears that even at the stage of hearing of the application for injunction, being AP-COM 436 of 2025, despite repeated service, none appeared on behalf of the respondents. Thus, the matter is taken up in their absence.
3. The respondents provided space to the petitioner's predecessor, namely, M/s. Vodafone Essar South Ltd. measuring about 2500 sq. ft. located at Dag No. 459, Mouza – Khaskhol, J.L. No. 4, P.S. English Bazar, District – Malda, for installation of mobile tower and other equipments.

Accordingly, an agreement for Leave and License was executed on March 27, 2007.

4. The petitioner succeeded M/s. Vodafone Essar South Ltd. on the basis of a scheme of amalgamation and arrangement, which was approved by the High Court at Bombay. According to the petitioner, the ownership of the equipments and the tower remained with the company and the petitioner had the discretion to remove the equipment and the tower from the said property. Clause 12.2. of the said agreement provided for unilateral termination of the contract by the licensee, upon serving thirty days' notice to the licensor. It is contended by Mr. Sen learned senior advocate that the agreement for Leave and License also contemplated that upon determination of the agreement, the licensor should allow the licensee to remove the equipments and thereafter the licensee shall deliver khas, vacant and peaceful possession of the said space to the licensor, subject to full refund of the security deposit and other admissible dues.
5. It is contended that since March 27, 2007, the petitioner was in lawful possession of the subject property and was duly tendering agreed monthly consideration towards discharge of its contractual obligations under the said agreement. The relationship between the parties began to sour due to non-cooperation of the respondents in converting the existing set up from a non-electricity supply site to a permanent electricity supply site.

6. The dispute arose upon the denial of the respondents to allow the petitioner to convert the energy from diesel to electricity for the operation of the tower. The petitioner terminated the Leave and License agreement in terms of Clause 12.2 of the agreement.
7. The leave and license agreement was terminated with effect from May 31, 2023. The petitioner also requested the respondents to provide safe passage to their personnel, so that the mobile tower could be dismantled and removed. The respondents allegedly started demanding money and the petitioner offered a sum of Rs.30,000/-, to resolve the dispute amicably. The proposal was made by a letter dated October 9, 2023. The said tower was not operational since May, 2023 and the equipments and the mobile tower were lying idle.
8. When the petitioner sought to remove the apparatus, equipments, accessories etc. the respondents obstructed. Thus, an application for interim order was filed before this Court under Section 9 of the Arbitration and Conciliation Act, 1996. First, an order was passed by this Court, permitting the petitioner to make an inventory. The application was then disposed of, permitting the petitioner to remove the articles. The petitioner invoked arbitration, claiming damages for the loss of business as the equipments, accessories etc. were lying idle and could not put to use although they were operational.
9. A notice invoking arbitration was issued on March 13, 2025. The said notice was received by the respondents on March 26, 2025. The petitioner has a claim of more than Rs. 30 lakhs. Clause 21 of the

Leave and License Agreement dated March 27, 2007 provides for resolution of disputes through arbitration. The clause is quoted below:

“21. Arbitration:

21.1 The Parties hereto agree that any disputes, differences or controversies arising out of or in connection with these presents and/or in any way or in any manner touching and/or concerning the dealing and transaction between the parties herein as recorded in this Agreement shall be referred to and settled out/or adjudicated upon Arbitration by the sole Arbitrator to be appointed by the Chief Executive Officer/Chief Operating Officer of Vodafone, West Bengal and the Parties hereby consent to be same.

21.2 Such Arbitration proceeding or proceedings will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and/or with the statutory modification thereof and/or subsequent enactment thereof or any other enactment for time being in force.

21.3 The venue of such arbitration proceeding or proceedings shall be at Kolkata.

21.4 The Arbitration shall be conducted in English Language only.

21.5 The award given by the sole Arbitrator shall be final in all respects and shall also binding upon both parties.”

10. The venue of arbitration has been agreed to be Kolkata.

11. Under such circumstances, keeping all the issues between the parties open for adjudication by the learned Arbitrator, this application is allowed. The objections which may be available to the respondents may be raised before the learned Arbitrator. All questions on arbitrability, admissibility of the claim, limitation etc. shall be decided by the learned Arbitrator, if raised. The respondent may also raise a counter claim.
12. This Court has not entered into the merits of the issues involved. The consideration of the application is limited to the existence of an arbitration clause and upon prima facie assessing that there are disputes between the parties.
13. Under such circumstances, this Court refers the matter to arbitration by appointing Mr. Kaushik Chowdhury, Advocate, Bar Library Club 1st Floor, [Mobile No. 9830262599] as the sole arbitrator, to arbitrate upon the disputes. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996.
14. The learned Arbitrator shall be at liberty to fix her remuneration as per the schedule of Arbitration and Conciliation Act, 1996.
15. AP-COM 39 of 2026 is disposed of accordingly.

(SHAMPA SARKAR, J.)