

ORDER SHEET
AP-COM/42/2026
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

INDUS TOWERS LTD.
VS
SHAHANUR ALAM

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 24th February, 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. On the last occasion none appeared for the respondent. The court recorded that the service was not satisfactory. The court directed substituted service by publication in two widely circulated dailies; one in English and one in Bengali. The substituted service has been effected in 'The Statesman' and 'Dainik Statesman'.
3. 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 437 of 2025, despite repeated service, none appeared on behalf of the respondents. Thus, the matter is taken up in their absence.
4. The respondents provided space to the petitioner's predecessor, namely, M/s. Hutchison Essar South Ltd. measuring about 2500 sq. ft. located at Dag No. 101, Khaitan No.- 387, J.L. No. 134, Touzi No.- 20, Mouza – Gulaichandi, P.S. Basirhat, District – 24 Parganas [N], for installation of mobile tower and other

equipments. Accordingly, a license agreement for installation of tower was executed on May 24, 2007.

5. The petitioner succeeded M/s. Hutchison 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 at the equipment and the tower from the said property. Clause 15.2. 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.
6. It is contended that since May 24, 2007, the petitioner was in lawful possession of the subject property and was duly tendering the agreed monthly consideration towards discharge of its contractual obligations under the said agreement. The relationship between the parties began to sour due to arbitrary and exorbitant demand being made by the respondent over and above the agreed contractual consideration.
7. The dispute arose due to petitioner refused to accept such unlawful claim which eventually led to the termination of license agreement upon invoking Clause 15.2 of the agreement.
8. The leave and license agreement was terminated by letter dated 9th December, 2019 with effect from 30 days of receipt of such notice. The petitioner also

requested the respondent to provide safe passage to their personnel, so that the mobile tower could be dismantled and removed.

9. When the petitioner sought to remove the apparatus, equipments, accessories etc. the respondent 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.

10. A notice invoking arbitration was issued on March 21, 2025. The said notice was served in terms of clause 22 of the agreement, however the respondent avoided such service. The petitioner has a claim of more than Rs. 30 lakhs. Clause 24 of the Leave and License Agreement dated May 24, 2007 provides for resolution of disputes through arbitration. The clause is quoted below:

“24. Arbitration:

24.1 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 and/or adjudicated upon Arbitration by the sole Arbitrator to be appointed by the Chief Executive Officer/Chief Operating Officer of HESL, West Bengal and the Parties hereby consent to the same.

24.2 Such Arbitration proceeding or proceedings will be conducted in accordance with the Arbitration and Conciliation Act, 1996 and/or with the statutory modifications thereof and/or subsequent enactment thereof.

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

24.4 The Arbitration shall be conducted in English Language only.

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

11. The venue of arbitration has been agreed to be Kolkata.
12. 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.
13. 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.
14. 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.
15. The learned Arbitrator shall be at liberty to fix her remuneration as per the schedule of Arbitration and Conciliation Act, 1996.
16. AP-COM 42 of 2026 is disposed of accordingly.

(SHAMPA SARKAR, J.)

pkd.