OCD 14

ORDER SHEET
AP-COM/76/2026
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S. ENRICH-SKE-JV
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 24th February, 2026.

Appearance:
Mr. Bhaskar Roy, Adv.
. . .for the petitioner.

Mr. Kumar Joyti Tewari, Sr. Adv.
Ms. Amrita Pandey, Adv.
Ms. A. Mishra, Adv.
. . .for the respondent.

The Court:

1. The petitioner is a joint venture enterprise and was formed by a Memorandum of Understanding executed between its partners. The respondent floated a tender for the work of Supply, Erection, Testing & Commissioning of 25KV OHE, including RC and PSI work form NYA to BLDA and modification of JER/YD, RGT/YD & ROP/YD in connection with the work of 3rd line between Narayangarh (Ex.) and Bhadrak in Kharagpur division (Phase I) (hereinafter referred to as "Work"). The value of the said work was Rs.18,65,08,395.51/-.

2. According to the petitioner, Clause 3.17 of the notice inviting tender provided that, the tender would be governed by the Indian Railways

Standard General Conditions of Contract (GCC), 2019. The relevant Clause is quoted below:

> "Tenderers are required to agree to abide by the Indian Railways Standard General Conditions of Contract, with all correction slips up-to-date and to carry out the work according to the Special Conditions of Contract and specifications of materials and works as laid down by Railway in the annexed Special Conditions/ Specifications, Schedule of Rates with all correction slips up-to-date for the present contract."

3. The petitioner's case is that the petitioner was the successful bidder in the tender process. The letter of acceptance was issued on March 10, 2021. The petitioner duly deposited the earnest money. In continuance of the letter of acceptance a contract was executed on March 5, 2022. The disputes arose with regard to handing over possession of the site and the petitioner alleged that the petitioner was prevented from proceeding with the work on account of various defaults and failures on the part of the respondent. Ultimately the contract was foreclosed in April 2023. The petitioner is aggrieved because payments were not released. The bills which were submitted from time to time towards the work partially executed by the petitioner, had not been paid.

4. By a letter dated November 17, 2023, the petitioner requested for payments of the first, second and third RA Bills. The respondent denied the claims by a letter dated November 23, 2023. According to the petitioner, huge losses were suffered not only on account of foreclosure,

but also on account of nonpayment of the bills. The petitioner also claims loss of profit. The petitioner relies on the Arbitration Clause in the GCC. Clauses 64.(1)(i) and 64(1)(iii)(d) are quoted below:-

> "**64.(1)(i):** In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the Contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63.1 of these Conditions, the Contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.
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> **64.(1)(iii)(d)** Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties."

5. The respondent however, submits that the petitioner did not complete the work and as such no amount is payable. It is further

submitted that the dispute raised by the petitioner would fall within excepted matters and as such non-arbitrable. Prima facie, it appears to this Court that there was a contract between the parties which was foreclosed. The disputes also arise out of alleged non-payment of dues under various heads. The claim is more than Rs. 6,20,81,010.10/- towards non-refund of earnest money, security deposit, compensation, non-payment of price variation bill etc. Thus, whether the claims fall under excepted matters will be decided by the arbitrator.

6. All objections with regard to the arbitrability of the dispute, admissibility of the claim, limitation etc. can also be raised before the learned Arbitrator.

7. Although the arbitration clause provides for a panel of three arbitrators, the parties consent to appointment of a sole arbitrator. Moreover, appointment of an arbitrator from the curated panel of the respondents is no longer permissible in law.

8. The referral court has to, prima facie, satisfy itself with regard to the existence of the arbitration clause and the jurisdiction of this court to entertain the application.

9. Under such circumstances, this Court allows the application by appointing Mr. Arindam Banerjee, Advocate [Mob. No. 9831236254] as the learned Arbitrator, to adjudicate the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

10. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.

11. AP-COM 76 of 2026 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

SP/