

OCD 18

ORDER SHEET
AP-COM/98/2026
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S. SABARI KRISHNA ENTERPRISES
VS
GENERAL MANAGER, SOUTH EASTERN RAILWAY

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

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

Mr. Kumar Jyoti Tewari, Sr. Adv.
Mr. Anamika Pandey, Adv.
Ms. Amrita Pandey, Adv.
Ms. Ayushi Mishra, Adv.
...for the respondent

The Court:

1. The petitioner is a registered partnership firm. The petitioner is engaged in the business of supply, erection, testing and commissioning of overhead electrification projects for various railway divisions under the Ministry of Railways. Pursuant to a notice inviting tender dated October 15, 2020, the petitioner participated in the same. The letter of acceptance was issued on October 15, 2020 to the successful bidder.

The contract was executed pursuant to the letter of acceptance. The tender document provided that the same would be governed by Indian Railway Standard General Conditions of Contract (GCC). Clause 64 of the GCC provides for settlement of dispute by arbitration which is 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 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.”

2. The jurisdiction of the Court was to be determined by the division or where the headquarters were situated. It is submitted that in this case the headquarter is at Garden Reach and the division of South Eastern Railways is at Kharagpur. Thus, this Court has jurisdiction to entertain the application.
3. According to the petitioner, due to failure on the part of the respondent to adhere to the terms and conditions of the contract and failure to offer clear site, the work could not be executed. Ultimately, this led to termination of the contract. Disputes have arisen not only on account

of termination, but also on account of non-payment of bills which were claimed on account of price variation, non-refund of the security deposit and non-refund of the bank guarantee which was provided by the petitioner towards performance guarantee.

4. Mr. Tiwari, learned senior advocate for the respondent, raises an objection with regard to maintainability of this application on the ground that the denial of the claim was sometime in 2022 and this application has been filed in February 2026. It is next contended that the claim of the petitioner falls within the excepted matters and as such, the dispute is not arbitrable.
5. The tender document refers to the GCC. The GCC contains an arbitration clause for settlement of disputes between the parties. Whether the entire claim of the petitioner falls within the excepted matters or not is a factual dispute, which has to be decided by the learned arbitrator. The question of maintainability of this application as raised by Mr. Tiwari is not entertained at this stage as it appears that the authority had proceeded to take steps for appointment of arbitrator and had also requested the petitioner by a letter dated January 30, 2025 to sign a waiver clause with regard to non-applicability of the provisions of Section 12(5) and Section 31A(5) of the Arbitration and Conciliation Act, 1996. The records further reveal that the communications between the parties had also continued in the interregnum. Thus, the issues raised by Mr. Tiwari on the point of limitation, arbitrability of the dispute, jurisdiction, admissibility of the

claim etc. and whether any claim of the petitioner falls within the excepted matters can be urged before the learned arbitrator.

6. The application is allowed.
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 respondent is no longer permissible in law.
8. Upon recording such consent, Justice Samapti Chatterjee, former judge of this Court, is appointed as the arbitrator to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix her remuneration in terms of the Schedule of the Act. All questions with regard to arbitrability of the dispute, admissibility of the claim, limitation etc. are kept open to be decided by the learned arbitrator, if raised.
9. The application is disposed of.

(SHAMPA SARKAR, J.)