

OCD-24

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/268/2026

THE BRAITHWAITE BURN AND JESSOP CONSTRUCTION COMPANY
LIMITED
VS
EASTERN RAILWAYS AND OTHERS

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 20th April, 2026.

Appearance:

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Soumya Majumdar, Sr. Adv.
Ms. Sharmistha Ghosh, Adv.
Mr. Amit Ghosh, Adv.
Mr. Ranit Ray, Adv.
...for the petitioner

Ms. Aparna Banerjee, Adv.
...for the respondent

The Court: The petitioner has preferred the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim protection by way of injunction restraining the respondent from taking any coercive steps pursuant to notice dated 09.02.2026 and the termination notice dated 11.02.2026. The petitioner has also prayed for an order restraining the respondent from invoking the bank guarantee bearing no. 05004GPGE2528301, dated 10.10.2025 for a sum of Rs.3,38,03,330.14 and the bank guarantee bearing no.

05004GPGE2514001, dated 20.05.2025 for a sum of Rs.38,54,900/- pending initiation and disposal of arbitral proceedings.

Learned Senior Counsel for the petitioner states that the petitioner was awarded the work for the construction of a Road Over Bridge and the allied works by the respondent vide Letter of Acceptance dated 26.09.2025. Pursuant thereto, the petitioner furnished the aforesaid bank guarantees towards earnest money and performance security. Learned Senior Counsel for the petitioner further states that although the drawings were handed over on 24.10.2025 and preliminary mobilisation was commenced, the work could not progress on account of several site hindrances including obstruction such as trees, electric poles, encroachments and underground utilities.

The Respondent alleged inadequate deployment of manpower and machinery and issued a notice under Clause 62 of the General Conditions of Contract, culminating in a 48-hours' notice dated 09.02.2026 and subsequent termination dated 11.02.2026. The Petitioner challenged the said notices before this Court in WPA No. 3307 of 2026. Vide interim order dated 11.02.2026, the operation of the notices dated 09.02.2026 and 11.02.2026 was stayed. Subsequently, vide order dated 07.04.2026, the learned Single Judge disposed of the said writ petition, granting liberty to the Petitioner to approach Respondent No. 4 for resolution of disputes within one week, with a further direction that, in the event of failure, the disputes may be referred to the Dispute Adjudication Board (DAB) and, in its absence, to

arbitration. It was further directed that the interim protection granted earlier would continue till Respondent No. 4 decides the issues.

Perusal of the record indicates that no dispute appears to have been raised by the Petitioner before Respondent No. 4 in terms of the liberty granted by this Court. However, learned Senior Counsel for the Petitioner has produced a copy of a representation stated to have been submitted to Respondent No. 4 pursuant to the said liberty.

Learned Counsel for the Respondent submits that the issue has still not been decided by Respondent No. 4. Admittedly, as on date, Respondent No. 4 has not taken any decision in terms of the order passed by this Court in WPA No. 3307 of 2026.

In view of the aforesaid, this Court is of the opinion that the present petition under Section 9 of the Act is premature. The Petitioner has already availed the remedy as provided by the Writ Court in WPA No. 3307 of 2026; however, Respondent No. 4 is yet to take any decision, and the stage for invocation of arbitration has not yet arisen in terms of the contractual dispute resolution mechanism read with the order dated 07.04.2026.

It is also pertinent to note that the interim protection granted earlier vide order dated 11.02.2026 continues to remain in operation in terms of the order dated 07.04.2026 till such time respondent no.4 takes a decision.

In such circumstances, no further orders are called for at this stage.

It is made clear that the respondent no.4 shall decide the petitioner's representation as directed by this Court in WPA No. 3307 of 2026 and the same shall be communicated to the petitioner.

Accordingly, the present petition is disposed of as premature with liberty to the petitioner to take appropriate steps in accordance with law at the appropriate stage.

(GAURANG KANTH, J.)

R.Bhar