

OCD 7

ORDER SHEET
AP-COM/1014/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S ANUPAM ENTERPRISES
VS
THE PRINCIPAL CHIEF MATERIALS MANAGER

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 29th January, 2026.

Appearance:
Ms. Hasnuhana Chakraborty, Adv.
. . .for the petitioner.

Mr. Mukesh Kumar Gupta, Adv.
Mr. Shaunak Ghosh, Adv.
. . .for the respondent.

The Court:

1. This is an application for appointment of an Arbitrator for adjudication of the disputes which arose out of the purchase order no. 29/2017/2550/37344 dated March 27, 2017, issued by SMM-IV, Chittaranjan Locomotive Works, to the petitioner. The petitioner being aggrieved by various disputes and differences which arose in the course of supply of articles, initially approached the West Bengal State Micro Small Enterprises Facilitation Council. It was found by the Council that the supply unit had received full payment against the supply made. The reference was dismissed with liberty to the petitioner to approach the appropriate forum with regard to the other allegations of deduction of various amounts from the bills which were allegedly payable to the

petitioner in respect of other purchase orders, by enforcing the alleged claims against the petitioner arising from the purchase order of March 27, 2017.

2. Ms. Chakraborty, learned advocate for the petitioner relies on the Indian Railways Standard (IRS) Conditions of Contract and paragraphs 2901, 2902 and 2903 thereof. She submits that in the event of any dispute or difference between the parties as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question, the contractor can demand in writing that the dispute be referred to arbitration.
3. The demand for arbitration shall specify the matters which are in question or the subject of the dispute or difference as also the amount of the claim, item wise. The Clause provides that the parties may waive the applicability of Sub-section 12(5) of the Arbitration and Conciliation Act. It is contended that when the disputes arose and the respondent deducted various claims from the petitioner's bills, by a letter dated September 10, 2025, the petitioner approached the Principal Chief Materials Manager thereby invoking the arbitration clause and specifying its demands. The petitioner was issued a notice on 12th January, 2026, by the DyCMM(D)/CLW/CRJ, asking the petitioner to approach the appropriate authority by demanding arbitration.
4. Mr. Shaunak Ghosh, learned advocate for the respondent, submits that the application is premature. The petitioner ought to have approached

the General Manager for the purpose of determination of the dispute and only if the dispute was not resolved within 120 days from such approach being made to the General Manager, could the petitioner demand arbitration.

5. Paragraph 2900 of the said conditions deals with dispute resolution. Paragraph 2901 deals with conciliation of disputes. It provides that all disputes and differences arising out of or in connection with the contract shall be referred by the party raising the dispute to the concerned Chief Materials Manager (CMM) or the Divisional Railway Manager or the Executive Director by issuing a notice of dispute.
6. Thus, Mr. Ghosh's submission that the petitioner was required to approach the General Manager is not correct. Paragraph 2920 deals with the matters or disputes to be finally determined by the railways. The petitioner approached the conciliator by issuing a notice. It appears from paragraph 2903 which deals with the demand for arbitration that in the event of any dispute or difference between the parties as to the construction or operation of the contract or the respective rights and liabilities of the parties arising out of the contract, the demand shall be made in writing for reference of the dispute to arbitration. Such demand can be made in respect of all disputes except those which fall under the excepted matters. It is not the case of the railways that the dispute raised by the petitioner is covered by the definition of excepted matters under the conditions.

7. Moreover, the expression “or” in the 4th line of the said paragraph is disjunctive and not conjunctive. The party raising the dispute may demand for arbitration if there are subsisting disputes or demand arbitration at a later stage, if the General Manager or any other authority at the conciliation stage does not take a decision within 120 days as referred to in paragraph 2902. The petitioner complied with the provisions of paragraph 2901. No decision was taken by the conciliator. The records do not reveal that any conciliation proceeding had at all been initiated. Thus, the petitioner was within its right to demand arbitration, under paragraph 2903 of the said conditions. There is another angle to the said issue. The petitioner had approached the West Bengal State Micro Small Enterprises Facilitation Council some time in 2022. The matter was pending before the Council. The respondent participated. Had the respondent been interested in holding a conciliation proceeding in terms of paragraph 2901, they could have done so.
8. Moreover, the letter dated January 12, 2026, issued by DyCMM(D)/CLW/CRJ clearly indicates that the respondent being conscious of the provisions of paragraph 2903 asked the petitioner to approach the appropriate authority by demanding arbitration. A notice invoking arbitration was already been issued on September 10, 2025. Thus, further demand of arbitration pursuant to the letter dated 12th January, 2026 will be an empty formality. The respondent did not agree to refer the dispute. In view of the present legal position the Railway

Authorities cannot also unilaterally constitute a Tribunal. Under such circumstances and in view of the stand taken by the Railways this Court is of the view that, relegating the matter for further consideration will be an empty formality. Reference is made to the decision of ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited : (2015) 13 SCC 610*** and ***Visa International Limited vs. Continental Resources (USA) Limited : (2009) 2 SCC 5***.

9. All objections with regard to arbitrability, admissibility, limitation etc, are kept open.
10. Under such circumstances, this Court allows the application by appointing Mr. Shashwat Nayak, Advocate, [Mob. No. 8910251490] 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.
11. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.
12. AP-COM 1014 of 2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)