

MHCC010154732024



City Civil and Sessions Court, Mazgaon Greater Mumbai

Court Room No. 31 – Commercial Court

Notice of Motion No. 3978 / 2024

in

Commercial Summary Suit No. 476 / 2024

Simplex Infrastructure Limited

... Applicant

(Original Defendant)

IN THE MATTER BETWEEN

Pinnacle Sand

... Plaintiff

Vs.

Simplex Infrastructure Limited

... Defendants

Appearances :

Plaintiff : Adv. Ritesh Upadhyay

Adv. Parul Pandya

Defendants : Adv. Sachidanand Pandey

CORAM : H. H. JUDGE PRASAD P. KULKARNI

COURT ROOM NO.31.

DATE : 02.07.2025

ORDER

1. Defendant No. 1 has taken out this Notice of Motion on ground that in view of Arbitration Clause No. 24 in terms and conditions overleaf of Purchase Orders, the matter may be referred to

Arbitration or plaint may be returned under Order 7 Rule 10 of the Code of Civil Procedure, 1908 (the Code, for short) or suit may be stayed. If at all matter is not settled in arbitration, then Court of Calcutta would be having jurisdiction to try and entertain the Suit. Notice of Motion is supported by an affidavit. Plaintiff filed detail reply at Exh.11, which is also supported by an affidavit.

2. Prior to discussing averments of rival parties, it would be relevant to refer few facts relating to present dispute. Plaintiff filed the suit for recovery of amount of Rs. 1,45,84,419/- against defendant Nos. 1 to 9. It is case of plaintiff that, it supplied construction material to defendants, who are doing business of construction of road and Metro rail. As defendants failed to pay outstanding amount, so the suit was raised.

3. Defendant No. 1, 2, 5 and 8 earlier tendered one Notice of Motion bearing No. 4733 / 2024 for condonation of delay to file written statement. However, the then Presiding Officer is pleased to reject that Notice of Motion on 28.02.2025 observing that it being a Summary Suit, specific procedure is to be followed. On this backdrop, on 10.10.2024, written statement filed by defendant No. 1, 2, 5 and 8 is taken on record by the then Presiding Officer observed that written statement is taken on record only for identification purpose.

4. In view of above, defendant No. 1 tendered this Notice of Motion. I have heard Learned Advocate Mr. Ritesh Upadhyay appearing for plaintiff and Learned Advocate Mr. Sachidanand Pandey appearing for defendants.

5. Advocate for defendants submit that Purchase Orders are accompanied with terms and conditions and as per Clause No. 24, in the event of any dispute relating to Purchase Orders, dispute is to be referred to Arbitration and if it is not settled, then Court at Calcutta would be having jurisdiction to entertain it. He further submits that the plaintiff has acted upon Purchase Orders. So, Civil Court do not have jurisdiction to try and entertain present suit in view of specific Arbitration Clause.

6. He further submits that Arbitration Agreement is not require to be signed by both parties and only requirement is that it is to be in writing and acted upon by the parties. Learned Advocate for defendants vehemently submits that Arbitration Clause is very clear hence the matter may be referred to Arbitration or it may be returned under Order 7 Rule 10 of the Code. Defendants relied on several authorities, which would be discussed in later part of this order.

7. Per contra, Advocate for plaintiff submits that, it is a simple dispute of non payment of dues. Plaintiff supplied goods to defendants and defendants were supposed to pay outstanding amount within time. As that has not been done, so the suit for recovery of amount is filed by plaintiff. By pointing out first page of Purchase Orders, Advocate for plaintiff submits it says, jurisdiction would be of Hon'ble Bombay High Court. Contrary to it, so called Arbitration Clause speaks about referring dispute to Arbitration and bestow jurisdiction on Courts at Calcutta. Advocate for plaintiff further submits that there is no dispute about contract, therefore, application being devoid of merit, it may be rejected.

8. Considering rival submissions, I have gone through Record and Proceedings. It is correct that the plaintiff has acted upon Purchase Orders and supplied material to the defendants. So, it is evident that both parties are placing reliance on Purchase Orders. Along with Purchase Orders, there is one Annexure and overleaf terms and conditions are mentioned. As pointed out by Advocate for plaintiff, in Annexure at bottom in column 'OTHER TERMS' it is mentioned that, "JURISDICTION : SUBJECT TO MUMBAI HIGH COURT". However, in terms and conditions, which are overleaf, more particularly item no. 24 reads as under :-

Dispute Resolution, Governing Laws and Jurisdiction :

- a) In the event of any dispute or differences arising out of and in connection with the Purchase Order, such disputes shall be firstly attempted to be settled by mutual discussions. In case of failure of the parties to reach to an amicable settlement within 30 days from the date of referring the dispute for mutual discussion, the disputes will be referred to arbitration.
- b) On failure of amicable settlement as mentioned in sub clause (a) of this clause, the dispute or differences shall thereafter be settled under the Arbitration and Conciliation Act, 1996 as amended from time to time by a sole arbitrator appointed by the Company Secretary (CS) of the Purchaser. The venue of arbitration shall be Kolkata, India and the language of the arbitration shall be English. The award of the arbitrator will be final and binding upon the parties. The Hon'ble Courts at Calcutta will have the exclusive jurisdiction to adjudicate all matters arising out of the Purchase Orders.
- c) The governing law of this Purchase Order will be the laws of India.

9. So, what is written in Annexure Clause No. 24 of terms and conditions is not a disputed fact. It is a matter of fact that plaintiff has acted upon Purchase Orders and at that point of time, plaintiff was well aware of this Clause. It is not a case that all of sudden defendants have

come with Arbitration Clause and pressing it into service.

10. In order to support his submission, Advocate for defendants relied on following Judgments of the Hon'ble Supreme Court from Sr. Nos. 1 – 3, 6 and Judgments of Hon'ble Bombay High Court etc. :

1. M/s. Caravel Shipping Services Pvt. Ltd. V/s. M/s. Premier Sea Foods Exim Pvt. Ltd. arising out of Civil Appeal Nos. 10800-10801 of 2018 arising out of SLP(c) Nos. 31101-31102/2016 Dt. 29.10.2018.
2. Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd. reported in (2017) 7 Supreme Court Cases 678.
3. BGS SGS Soma JV Vs. NHPC Ltd. reported in (2020) 4 Supreme Court Cases 234.
4. Judgment of Hon'ble Bombay High Court in the case of Parekh Plastichem Distributors LLP Vs. Simplex Infrastructure Limited arising out of Arbitration Application No. 250 of 2021 Dt. 14.09.2023.
5. Judgment of Hon'ble High Court of Delhi in the case of M/s. Devyani International Ltd. Vs. Siddhivinayak Builders and Developers reported in 2017 SCC OnLine Del 11156.
6. The Branch Manager, M/s. Magma Leasing & Finance Ltd. & Anr. Vs. Potluri Madhavalata & Anr arising out of Civil Appeal No. 6399 of 2009 arising out of SLP (c) No. 21323 of 2007 Dt. 18.09.2009.

11. Per contra, Advocate for plaintiff relied on Judgment of Hon'ble Punjab and Haryana High Court at Chandigarh in the case of M/s. Simplex Infrastructure Ltd. and Anr. Vs. M/s. J.P. Singla Engineers and Contractor arising out of CR 6634/2019 Dt. 09.12.2022.

12. Prior to discussing ratio of above authorities and their applicability to the facts in hand, it would be necessary to refer Chapter II of the Arbitration and Conciliation Act, 1996 (the Act, for short). As per Section 7(3) of the Act, an arbitration agreement shall be in writing. Terms and conditions which are annexed to Purchase Order, more particularly Clause No. 24 is in writing and it is an integral part of the Purchase Order. Plaintiff is well aware of this Clause. However, it is a matter of fact that said Clause is not in a format of agreement and neither it is signed by both parties.

13. On the very point, Judgment in the case of **Caravel** (supra) is perfectly applicable. In that case, respondent filed Suit to recover an amount based on Bill of Lading. The appellant filed Interim Application (I. A.) under Section 8 of the Act and pointed out that arbitration clause was included in the printed terms annexed to the Bill of Lading. While discussing that issue, Hon'ble Apex Court in Para No. 9 has very clearly opined that it is not necessary that in all cases, an arbitration agreement needs to be signed. It is observed only per-requisite is that it be in writing, as has been pointed out in Section 7(3) of the Act. So, the ruling is perfectly applicable to the facts in hand and the very first requirement of arbitration agreement that it needs to be in writing has been fulfilled.

14. Section 8 of the Act speaks about "Power to refer parties to arbitration where there is an arbitration agreement". Said provision is very clear and says that, "a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting

his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists”.

15. Keeping in mind above provision and applying it to the facts in hand, at the cost of repetition, again it is made clear that the plaintiff has acted upon various Purchase Orders and was well aware about arbitration clause. So, this Court has reason to believe that plaintiff was well aware of arbitration clause.

16. In **Simplex Infrastructure** (as relied on by plaintiff), there was suit filed for recovery of amount due as bill of minor patch work was due. That was a case of non payment of dues simplicitor and the Hon'ble Punjab and Haryana High Court observed that subject matter of dispute was not the subject matter of arbitration agreement and for that reason arbitration clause was not pressed into service.

17. So far as case of **Indus Mobile** and **BGS SGS** (supra) relied on by defendants are concerned, those speaks about dispute relating to place of arbitration and maintainability of appeal under Section 37 of the Act. Here is no such case. Hence, these two authorities are not applicable to the facts in hand.

18. In case of **Parekh** (supra), there was dispute about outstanding dues and there was an arbitration clause, which specifically says that if there is any dispute or difference between the parties relating to outstanding dues, then place of arbitration would be Kolkata. In that case as well, in Purchase Order in title 'Other Terms', it was stated that,

jurisdiction would be subject to Bombay High Court. However, Hon'ble Bombay High Court in para no. 33 of said order observed as follows :

“33. I am unable to accept the said submission of the Applicant. In the present case, this Court has to consider as to what is the venue of the Arbitration, and only if the venue of the Arbitration is Mumbai would this Court have jurisdiction to entertain this Application under Section 11 of the Act. Although, in the Annexure, it is stated that jurisdiction is subject to Mumbai High Court, the same is not at all in connection with the arbitration proceedings. As far as Arbitration is concerned, Clause 23 of the purchase orders is very clear that the Arbitration would be at Kolkata and, in fact, Clause 24, which follows the same, provides that all transactions will be subject to the jurisdiction of the Calcutta High Court and the Courts thereunder”.

19. In the Judgment of **Parekh** (supra), the Hon'ble Bombay High Court is pleased to observe that arbitration clause is very clear and for that reason held that Hon'ble Bombay High Court has no jurisdiction to entertain application filed under Section 11 of the Act. The facts as discussed above are perfectly applicable to the facts in hand, though Purchase Order's first page speaks about jurisdiction of Bombay High Court but specific clause no. 24 is very clear and it speaks about arbitration. So, that clause will prevail. Hence, I find said Judgment is perfectly applicable to the facts in hand.

20. In another case i.e. **Devyani** (supra), there was an arbitration clause that “any dispute or difference arising between the parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration to a sole arbitrator”. The clause mentioned in the authority is very similar to the clause no. 24 of this case. In the case of **Devyani**, Hon'ble Delhi High Court is pleased to confirm seat of arbitration shall be at

New Delhi. So, said ruling is also applicable to the facts in hand.

21. In the case of **Branch Manager** (supra), the effect of arbitration clause, even after completion of contract was discussed. One of the objection raised by the plaintiff in this case is that material has already been provided to the defendants and so arbitration clause will not come in picture. However, I am not inclined to accept said submission for a reason that in the case of **Branch Manager**, it is observed that even after contract comes to an end, the arbitration clause would survive, if it relates to dispute arising out of or in respect of or with regard to or under the contract. I find ratio of said Judgment is applicable to the facts in hand.

22. Certainly making payment for material supplied is an integral part of Purchase Order. So, said dispute can very well be said to be dispute relating to the Purchase Order and it is perfectly covered as per arbitration clause no. 24. In view of above, following are the conclusions :

1. Arbitration Agreement only need to be in writing and it is not require to be signed by the parties. Thus, Clause No. 24 of Purchase Order fulfill said criteria.
2. There exists valid arbitration clause no. 24 and plaintiff was well aware about it.
3. Plaintiff was always aware about the arbitration clause, and willingly acted upon Purchase Order, so said arbitration clause is binding on plaintiff.
4. As per arbitration clause No. 24, if there is no amicable settlement then dispute has be referred to arbitration and its place would be at Kolkata. If it is not settled within time then Court at Calcutta would have jurisdiction to try and entertain the suit.

23. Thus, I find substance in the submissions made by Advocate for defendants. In view of specific Arbitration Clause and as per Section 8 of the Act, the parties are required to be referred for arbitration. Once the matter is referred to arbitration, nothing survives. So, in that event, suit needs to be disposed of. So far as alternate prayer of defendants that plaint may be returned or suit may be stayed, does not survive. Hence, Notice of Motion succeeds. Hence, following order is passed :

ORDER

1. Notice of Motion No. 3978 of 2024 is allowed.
2. In view of arbitration clause no. 24 of terms and conditions overleaf Purchase Order, both parties are referred to arbitration.
3. Seat of arbitration would be at Calcutta.
4. If the matter is not settled in arbitration, then the Court at Calcutta would have jurisdiction to try and entertain the present suit.
5. In view of above, Commercial Summary Suit No. 476 of 2024 is disposed of.
6. Court fees be refunded to the plaintiff, as per rules.
7. Order is dictated and pronounced in Open Court.



Mumbai
Dated : 02.07.2025

(Prasad P. Kulkarni)
Judge, City Civil & Sessions Court,
Court Room No.31 - Commercial Court,
Mazgaon, Greater Mumbai

Dictated on : 30.06.2024
Transcribed on : 01.07.2024
Signed by HHJ on : 02.07.2024

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
02.07.2025	3.50 p.m.	Prachi Y. Potdar Stenographer - Grade I
Name of the Judge		HHJ Shri. Prasad. P. Kulkarni (C.R.NO. 31)
Date of Pronouncement of Judgment/Order.		02.07.2025
Judgment/order signed by P.O on		02.07.2025
Judgment/order uploaded on		02.07.2025