

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/267/2026

M/S. TIMBCON
VS

SYAMA PRASAD MOOKHERJEE PORT, KOLKATA AND ORS.

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 8th May, 2026.

Appearance

Ms. Subhangi Bhattacharya, Adv.

Ms. Adrisnata Chakraborty, Adv.

...for the petitioner

Mr. Ashok Kumar Jena, Adv.

...for the respondents

1. The Court: Notice of Motion and affidavit of service are taken on record.
2. The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties arising out of the works contract dated 11.03.2025.
3. Learned Counsel for the petitioner submits that pursuant to the work order dated 02.09.2024, the respondents awarded to the petitioner the work of thorough interior and exterior renovation of the SE(KPD)'s Office and SE(ENV)'s Office situated at 51, C.G.R. Road, under K.P. Docks. The parties subsequently entered into a formal agreement dated 11.03.2025, incorporating the terms and conditions governing execution of the said work. It is the case of the petitioner that the work under the contract has been duly completed in accordance with the terms of the agreement. However, notwithstanding such completion,

the respondents have failed and neglected to release the outstanding dues payable to the petitioner.

4. It is further submitted that the petitioner invoked the arbitration clause by issuing a notice under Section 21 of the Act dated 03.02.2026, seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
5. The respondent No. 3, vide communication dated 20.02.2026, declined the claim of the petitioner and refused to release the payments due.
6. Learned Counsel for the petitioner further submits that in terms of Clause 10.2 of the agreement, the petitioner preferred an appeal/representation before the designated authority vide letter dated 17.03.2026. However, no effective resolution has been arrived at, compelling the petitioner to approach this Court by way of the present petition.
7. Learned Counsel for the respondents submits that the present petition is premature, inasmuch as the petitioner has not adhered to the requisite pre-arbitration steps as stipulated under the contract, prior to the issuance of the notice under Section 21 of the Arbitration and Conciliation Act, 1996.
8. The submissions of the Learned Counsel for the respondents are two-fold. First, it is contended that the entire payment due to the petitioner has already been released. Second, it is contended that the petitioner has failed to comply with the procedural pre-conditions prescribed under the contract before invoking arbitration, and that the present petition has been preferred prematurely, without exhausting the remedies available under the agreement prior to issuance of the notice under Section 21 of the Act. In particular, it is submitted that the

petitioner has not complied with Clause 10.2 of the General Conditions of Contract.

9. A perusal of the work order dated 02.09.2024 prima facie discloses the existence of an arbitration clause between the parties. The disputes raised by the petitioner pertain to non-payment of alleged contractual dues and are contractual in nature. The invocation of arbitration by the petitioner vide notice dated 03.02.2026 is not in dispute. Despite the same, no Arbitrator has been appointed in terms of the agreed procedure.
10. This Court observes that the petitioner had made a representation before the concerned Engineer on 12.01.2026, and the Engineer decided the matter vide communication dated 20.02.2026. The petitioner thereafter preferred an appeal before the Chairman vide representation dated 17.03.2026. Since the Chairman has failed to respond to the said representation, the petitioner has been constrained to file the present petition. It is noted that the petitioner has duly invoked arbitration proceedings by issuing the notice under Section 21 of the Act. The existence of the contract between the parties is not in dispute, nor is the arbitration clause under Clause 10.3 thereof. The sole objection raised by the respondents is that the petitioner has failed to comply with the pre-arbitration steps stipulated in the contract, which provide that the right to invoke arbitration accrues only upon the expiry of 60 days from the date of the decision rendered by the Chairman. A perusal of the record reveals that the petitioner submitted a representation dated 17.03.2026 before the Chairman, and no response thereto has been received till date. In these circumstances, it cannot be held that the petitioner was disentitled from invoking the

provisions of the Arbitration and Conciliation Act, 1996, particularly when both parties acknowledge the arbitrable nature of the disputes. The silence or inaction of the Chairman cannot be permitted to indefinitely foreclose the petitioner's right to seek adjudication of its legitimate contractual claims. Accordingly, this Court is prima facie satisfied that an Arbitrator is required to be appointed under Section 11 of the Arbitration and Conciliation Act, 1996.

11. Accordingly, this Court appoints Mr. Arik Banerjee, Advocate, Bar Library Club (Mob: 9836710962), as the Sole Arbitrator to adjudicate the disputes between the parties.
12. The learned Sole Arbitrator shall be entitled to fix his remuneration in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996, unless otherwise agreed by the parties.
13. The learned Arbitrator shall, prior to entering upon the reference, make the necessary disclosure in terms of Section 12 of the Act.
14. All questions, including those relating to limitation, maintainability of claims, jurisdiction, and merits, are expressly kept open to be decided by the learned Arbitral Tribunal.
15. The Petitioner shall communicate a copy of this order to the learned Sole Arbitrator forthwith for necessary action.
16. With the aforesaid directions, the present application stands disposed of.

(GAURANG KANTH, J.)