

OCD-5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/827/2025

TECHMA ENGINEERING ENTERPRISE PRIVATE LIMITED
Versus
UNION OF INDIA AND ANR.

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH

Date : 12th November, 2025.

Appearance

Mr. Suddhasatva Banerjee, Adv.

Mr. Sourojit Dasgupta, Adv.

Mr. Aasish Choudhury, Adv.

Ms. Uma Bagree, Adv.

...for the petitioner

Mr. Bishambhar Jha, Adv.

Ms. Munmun Mishra, Adv.

...for the respondent Railway

The Court: The petitioner has filed the present application under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an order of restraint against the respondent from giving effect to and/or recovering and/or deducting and/or adjusting any form of damages or penalty or any other amount as claimed by the respondent in the Cancellation Advice and Recovery Notice dated 04.08.2025.

It is the case of the petitioner that the respondent issued a purchase order dated 28.03.2025 in favour of the petitioner, for the manufacture and supply of Elastic Rail Clips MK-V with flat toe for 60kg/52kg rail sections to

RDSO's Drg. No. T-5919/Alt. – 2 or latest with IRS specification No.T-31-2021 (5th Revision).

The petitioner submits that it has only one manual MPI with monthly production capacity of 1,08,000 nos. as approved by the RDSO. The petitioner asserts that it is not in a position to exceed the said approved capacity. However, under the said purchase order, the respondents stipulated delivery of 1,60,000 nos. of products within a period of one month from the date of issuance of the said purchase order. Since the stipulated quantity exceeded the petitioner's production capacity, the petitioner requested for extension of time and/or modification and/or bifurcation of the delivery period stipulated under the said purchase order. Apart from the fact that the petitioner did not have the production capacity for producing or supplying 1,60,000 nos. of products within a month, the petitioner further intimated to the respondents about the impossibility of the situation. The respondent thereafter revised the purchase order on two occasions. However, on both occasions, the revised quantities continued to remain beyond the petitioner's production capacity.

Aggrieved by the communication dated 27/28.05.2025 whereby the extension of the delivery period was modified, the petitioner filed a writ petition bearing No. 16985 of 2025 challenging the delivery schedule fixed by the respondent. During the pendency of the said writ petition, the respondent issued a Cancellation Advice dated 04.08.2025, cancelling the purchase order and imposing penalty of general damages amounting to Rs.34,70,144/-. This Court, vide order dated 07.08.2025, restrained the respondent from taking any steps towards recovery of the damages

mentioned in the Cancellation Advice dated 04.08.2025, until 29.08.2025. The said order was extended by an order dated 29.08.2025 and thereafter on 12.09.2025 till 28.11.2025. The said interim order remained operative till 27.10.2025, when the writ petition was dismissed with liberty granted to the petitioner to approach the appropriate forum in accordance with law.

The petitioner submits that the purchase order dated 28.03.2025 incorporates the IRS Conditions of Contract. According to the said clause the contract shall be governed by latest version (among with all correction slips) of IRS Conditions of Contract, and all other terms and conditions incorporated in the tender documents. The petitioner expresses its intention to invoke arbitration under the said clause. However, pending such invocation and adjudication of the disputes before the arbitral tribunal, the petitioner seeks an order of restraint against the respondent from taking any coercive steps for recovery of the general damages as indicated in the Cancellation Advice dated 04.08.2025.

Learned Counsel for the petitioner contends that the disputes between the parties are arbitrable in nature and are required to be adjudicated by the arbitral tribunal. However, if during the pendency of the said arbitral proceedings, the respondent is permitted to recover the said amount of general damages, the petitioner would suffer irreparable loss and injury which cannot adequately be compensated in terms of money.

Learned Counsel for the respondent states that the present application is not maintainable, as the petitioner has failed to comply with the terms of the contract. To buttress his argument, he states that the petitioner did not adhere to the timeline stipulated in the contract for supply

of the materials. He further contends that, from the very inception, the petitioner had no intention of complying with the purchase order and had, instead, sought for an extension of time to delay the supply of the said materials. He further states that the materials to be supplied by the petitioner are of crucial importance, as they relate to the safety measures of the Railways and any failure in timely supply could have caused serious prejudice to the respondent.

Learned Counsel for the respondent further states that the imposition and recovery of damages have been made strictly in accordance with the terms of the contract and hence, the present application shall not be entertained. To support his contention, learned Counsel for the respondent places reliance on Column – 6 of the purchase order wherein the time period for the supply of the materials is specifically stipulated and that any breach of the same entails the imposition of damages upon the petitioner.

This Court has heard the arguments advanced by the learned Counsel for the parties and has perused the materials placed on record.

It is not in dispute that an interim protection had earlier been granted to the petitioner in the writ petition, which remained operative till 27.10.2025 during the pendency of the writ petition. Upon dismissal of the said writ petition, the interim order stood vacated. Consequently, the controversy between the parties with regard to the alleged breach of the purchase order and the imposition of general damages is yet to be adjudicated by the appropriate forum in terms of the arbitration clause in the contract.

Prima facie, this Court finds that the dispute between the parties arise out of a contractual agreement containing an arbitration clause incorporating the IRS Conditions of Contract, 2022. The petitioner has expressed his intention to invoke the arbitration proceeding and therefore the matter squarely falls within the ambit of Section 9 of the Arbitration and Conciliation Act, 1996.

Considering that the alleged demand raised by the respondent pertains to general damages, which can be finally determined only upon adjudication by the arbitral tribunal, the recovery of such amount at this stage would cause undue hardship and prejudice to the petitioner. This Court is further of the view that the petitioner has made out a *prima facie* case warranting interim protection. The balance of convenience also lies in favour of the petitioner as the respondent, being a government entity, will not suffer any irreparable prejudice if recovery is deferred pending the arbitral proceedings. On the contrary, if the respondent is permitted to effect recovery prior to adjudication, the petitioner would suffer irreparable loss and disruption of its business operations, which would amount to irreparable injury.

In view of the aforesaid circumstances, this Court directs that the respondent shall remain restrained from taking any coercive steps to recover the general damages as mentioned in the Cancellation Advice dated 04.08.2025, for a period of eight weeks from date.

In the meanwhile, the petitioner is directed to take immediate steps to initiate the arbitral proceedings in accordance with the arbitration clause

contained in the purchase order dated 28th March, 2025 and to report compliance before this Court within a period of two weeks from date.

Let the matter be listed after two weeks.

(GAURANG KANTH, J.)

R.Bhar