

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.1 of 2014

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M/S Nilkamal Ltd., having its Head Office at Nilkamal House, Plot no. 77/78, Street No. 14, MIDC, Andheri (East), Mumbai -400093 through its Authorized Signatory Sri Uday Pankaj Dwivedi son of Late K N Dwivedi, resident of Chowkshikarpur, PO Begumpur, Patna -800009

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development & Housing Department, Room No. 159, 1st floor, Vikas Bhawan, New Secretariat, Patna -800015
2. The Project Director, Support Programme for Urban Reforms in Bihar, Room No. 159, 1st Floor, Vikas Bhawan, New Secretariat, Patna -800 001
3. The Additional Project Director Support Programme for Urban Reforms in Bihar-cum-Joint Secretary, Urban Development & Housing Department, Room No. 159, 1st Floor, Vikas Bhawan, New Secretariat, Patna -800 001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, GA 9

Mr. Pawan Kumar, AC to GA 9

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 25-06-2015

This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') with a prayer to appoint an Arbitrator.

The respondent-State of Bihar invited tenders for supply and delivery of Containerized Hand Carts with 6 bins, to various municipalities within the State. The items were to be made of

plastic. The value of the goods was Rs. 17,65,879.83. The petitioner was the highest bidder and the same was accepted on 16.8.2011. Thereafter an agreement was also entered into, which in turn contained Arbitration Clause at paragraph 9.3. The agreement provided for making security deposit.

The case of the petitioner is that on account of improper and incorrect designs furnished by the respondents it could not manufacture the items and supply them and inspite of repeated reminders the respondents did not perform their part of the obligation. It ultimately filed the present application with a request to appoint an Arbitrator.

Strong objection is raised by the respondents. According to them, the State of Bihar enacted law for appointment of Tribunal to resolve disputes of this nature and in that view of the matter, Arbitrator cannot be appointed. A learned Judge of this Court passed a detailed order running into 39 pages overruling the objection and it has become final.

Heard learned counsel for the petitioner and learned counsel for the respondents.

Normally, there should not be any difficulty in acceding to the request of a party, to appoint an Arbitrator, if the agreement contains a clause in this behalf. It is not in dispute that clause 9.3 of the agreement between the parties provides for Arbitration. This Court however feels that it is not necessary to appoint Arbitrator in this case. The reason is that though the agreement that was entered into between the parties, no work was executed. That apart, the agreement which was entered into in 2011, stood terminated. The only area of dispute is as to whether the State can be required to refund the security deposit. Appointment of

Arbitrator in a matter of this nature would only expose the State, to the liability of incurring the huge expenditure by it for pursuing the proceedings or to comply with the award.

This Court is of the view that the ends of justice would be made if the State is directed to refund the security deposit/performance guarantee without interest within two months from today.

Therefore, the petition is disposed of, directing that the respondent shall refund the security deposit, without interest, within a period of two months.

(L. Narasimha Reddy,CJ)

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