

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1414 of 2009

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M/S Chitra Gupta Construction Pvt. Ltd. through its Executive Director Mr. Jai Sinha son of Sri Umesh Prasad, Mohalla thakurbari Road, at and P.O. Jehanabad, District Jehanabad, Pin- 804408, State Bihar, office Mohalla Quamruddinganj, at and P.O. Bihar Sharif, District Nalanda, Pin 803101

.... Petitioner

Versus

1. National Buildings Construction Corporation (NBCC) Ltd. (A Government of India Enterprises), through the General Manager NBCC Place, Pragati Bihar, Bhisham Pitamah Marg, Lodhi road, New Delhi 1100013
2. The General Manager, National Buildings Construction Corporation (NBCC) Ltd. (A Government of India Enterprises), NBCC Place, Pragati Bihar, Bhisham Pitamah Marg, Lodhi Road, New Delhi 1100013
3. The Group General Manager, National Buildings Construction Corporation (NBCC) Ltd. (A Government of India Enterprises), NBCC Place, Pragati Bihar, Bhisham Pitamah Marg, Lodhi Road, New Delhi 1100013
4. The Additional General Manager, National Buildings Construction Corporation (NBCC) Ltd. B/6, Vijay Nagar, Ras Bihari Path, P.O. B.V.College, Patna-14, Bihar
5. The Project Manager cum Site Incharge, Project Implementation Unit (PIU) PMGSY, NBCC Ltd. Mohalla thana Chowk, Purani Bazar, Lakhisarai, P.S. Lakhisarai, Lakhisarai, State Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr.Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 08-01-2015 Heard learned counsel for the petitioner.

2. Despite service of notice on the learned counsel for the National Buildings Construction Corporation (NBCC) and appearance of the name of its counsel Mr. Satish Kumar Sinha no one has appeared on behalf of the respondents.

3. The prayer made by the petitioner in this writ

application reads as follows:

“(I) For commanding and directing to the concerned respondent to refund the security deposit (deposited and deducted from bills) amount i.e. Rs.10,47,128/- + Rs.5,47,839= Rs.15,74,967/- (Rupees Fifteen lacs Seventy Four thousand Nine hundred Sixty Seven) only to the petitioner immediately after closing the agreement, which was entered into between the parties in respect of work namely “Construction/ Upgradation of Road from Piri Bazar to Lohsarwa Gaon comes under Pakage No.BR/19/32” of Pradhan Mantri Gram Sadak Yojana under Lakhisarai District. Because the work in question could be not be completed within time due to some avoidable circumstances and non-cooperation of the respondent’s department and in these day rates of materials and labourers become grown up and in this situation the petitioner is unable to complete the said work at the old rate.

(II) For further directing to the concerned respondent to release/ refund the amount i.e. Rs.11,10,000/- (Rupees Eleven lakhs ten thousand) only which was deducted from Running account bills of the petitioner and keep withheld as yet, in respect of miles stone, in most arbitrary manner with regard to not completion of the work in question within stipulated time on the other hand delay was caused by the negligency of the department and due to unavoidable reason for which the company was fully aware.

(III) For further directing to the concerned respondent to



pay the entire bill value of work done worth Rs.20,00 lakhs, after taking measurement of work done because the petitioner had also executed several items for which the payment could not be made available to the petitioner uptill now which was done under direction and satisfaction of the respondents authorities.

(IV) For further commanding the respondent concern to pay the interest to the petitioner @ 18% per annum upon the aforesaid amount from the date of its due and till its realization.”

4. Mr. Rajendra Narayan, learned Senior counsel appearing on behalf of the petitioner, having regard to various documents enclosed with the writ application had preliminary sought to assail the inaction on the part of the authorities of NBCC in not allowing the petitioner to complete the work. According to Mr. Narayan this inaction of the NBCC has been reflected on the performance and financial issues of the petitioner.

5. Had there been proper assistance from the NBCC whose counsel had received the copy and yet not filed the counter affidavit, the things could have become clear as to whether the fault lies on the part of the petitioner in not completing the work or the authorities of the NBCC in not providing the platform for completing the work.

6. One thing, however, becomes very clear from reading

of the last representation of the petitioner dated 18.4.2007 that the petitioner was insisting both extension of time as also for revision of its estimate.

7. That would mean that the petitioner was not interested in completing the work on existing rate till the rate was revised. This issue, therefore, has arisen out of an inter-party contract and definitely taints to give rise to a dispute on account of refusal of the authorities of NBCC in not either extending the time or revising the estimate.

8. Be that as it may, for such an eventuality the inter-party agreement in clause 24 and 25 had provided Dispute Redressal System which for the sake of clarity is quoted hereinbelow:

“24. Dispute Redressal System

If any dispute or difference of any kind what-so-ever shall arises in connection with or arising out of this Contract or the execution of works or maintenance of the works there under, whether before its commencement or during the progress of work or after the termination, abandonment or breach of the contract, it shall be referred to Empowered Standing Committee which will consist of”

- i) One official member, Chairman of the Empowered Standing Committee, not below the rank of Addl. Secretary to the State Government.
- ii) One official member not below the rank of General

Manager, NBCC Ltd.

- iii) One non-official member who will be technical expert of Dy. General level selected by the Contractor from a panel of three persons given to him by the Employer.

Such decision in respect of every matter, so referred shall, subject to review as hereinafter provided, be final and binding upon the contractor. In case, the works is already in progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid with all the diligence.

24.2 The contractor and the employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the contractor and the employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of ninety days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

24.3 The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims upto five percent of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above

the limit of five percent of the initial contract Price he will be free to approach the courts applicable under the law.

25. Arbitration

25.1 In view of the provision of the clause 24 of Dispute Redressal System, it is the condition of the contract that there will be no arbitration for the settlement of any dispute between the parties.”

9. It would therefore appear from reading of the aforementioned clause 24 that the Empowered Standing Committee of three very high officials including one representing the interest of the petitioner, the contractor, has to go into matter of resolution of dispute.

10. That being so, keeping this writ application pending will serve no purpose. This writ application is, accordingly, disposed of with a liberty to the petitioner to approach the competent authority of NBCC for allowing it to raise the dispute before the Empowered Standing Committee and if that is done by the petitioner, the Empowered Standing Committee must make its best of the efforts to conclude the resolution of the dispute within a period of six months from the date it would enter into reference.

11. It goes without saying that when the petitioner would approach the Empowered Standing Committee, the respondent authority of the NBCC may also come out with the counter claim

if any, which also will be decided alongwith the claim filed by the petitioner.

12. At the same time this Court must make it clear that as the respondents themselves have not filed the counter affidavit and kept the matter pending for a period over five years before this Court, they shall be precluded from raising the question of delay before the Empowered Standing Committee.

13. With the aforementioned observations and directions, this application is disposed of.

(Mihir Kumar Jha, J)

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