

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6032 of 2007

=====

Asha Construction Pvt.Ltd., Office at Get Together, Vivekanand complex, Vidyapati Marg, P.S. Kotwali, District and Town Patna through its Director Anup Kumar, Son of Sri Pashupati Kumar, Resident of M.I.G.-51, Hanuman Nagar, P.S. Patrakarnagar, Kankerbagh, Patna 800020.

.... Petitioner/s

Versus

1.Bharat Heavy Electricals Ltd., BHEL House, Siri Fort Road, New Delhi through its Chairman and Managing Director.

2.Sr. Deputy General Manager (Contract Management) , Bharat Heavy Electrical Ltd., Tansmission Business Group, Block-VI, Annexe, Central Wing, 1st Floor, Bhopal-462021.

3.Regional Head, Bharat Heavy Electricals Ltd., Transmission Business Group, CE-106, Sector-1 Salt Lake, Kolkata 700064.

4.Deputy General Manager and Site In-Charge, Bharat Heavy Electrical Ltd., Naya Tola, Chandralok Chowk, Near Income Tax Office, Muzaffarpur.

5.SHRING Construction Company Pvt. Ltd., E-245, Nehru Colony, Haridwar Road, Dehradun-248001 (Uttaranchal) through its Chairman-cum-Managing Director.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Madhuresh Prasad, Adv with Mr. Abhay Shanker, Adv

For the Respondent No.5: Mr. Satyavrat Verma, Adv

For the BHEL : Mr. Rakesh Singh, Adv

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

24 27-01-2015 Heard learned counsel for the parties as with to

the following relief prayed in this writ application:-

“That this is an application praying for issuance of a writ in the nature of a writ of mandamus declaring that arbitration proceeding in relation to a dispute involving claim and counter claim between Respondent No. 1 and 5 arising out of Work Order No. TBSC/84003/MUZ/CIVIL/WO05-06 dated 28.04.2005 before Sri V.K. Jain, Sr. Deputy General Manager, TBTS BHEL, Bhopal to which petitioner is not a party can not affect the petitioner’s right to claim his legitimate dues for the work admittedly completed and certified by the officials of Respondent No. 1 in the

measurement book, when no dispute/claim or counter claim has been raised by either of the Respondent no. 1 and 5 against the petitioner, and further for issuance of appropriate consequential direction commanding Respondent No. 1 to make payment of amount due in relation of Running Account Bill (hereinafter referred to as "R.A.Bill" for the sake of brevity) no. 1 to 5 of the works undertaken and completed during May 2005 to December 2005."

2. Mr. Madhuresh Prasad, learned counsel for the petitioner, in support of the aforementioned prayer has submitted that though the petitioner was initially a sub-contractor of Bharat Heavy Electricals Limited (BHEL) in respect of the work order dated 28.4.2005 but subsequently when M/s Shring Construction Co. Pvt. Ltd. being the main contractor under whom the petitioner was working as a sub-contractor had abandoned the work, the petitioner was allowed to complete the work in capacity of contractor and as such, the claim of the petitioner for payment of the amount due for the work done during May, 2005 to December, 2005 cannot be avoided by the BHEL on the ground of pendency of an arbitration proceeding between respondent no.5, the main contractor, and BHEL.



3. In this regard he has referred to the record note of discussion held at Muzaffarpur site on 20.10.2005 between BHEL, Shring Construction Co. Pvt. Ltd. (respondent no.5) and the petitioner Asha Construction Pvt. Ltd. and on the basis of the same it has also been sought to be projected that there was a direct relationship between the petitioner and BHEL in respect of the work done and the payment claimed by the petitioner. He has also placed reliance to a communication of BHEL dated 23.11.2005 addressed to the petitioner, wherein the work of execution and handing over of yard civil work and control cum administrative building for 400/220 KV Sub-station at Muzaffarpur was entrusted to the petitioner. Finally he has also relied on a letter of BHEL dated 2.6.2007 as with regard to certain payment made to the petitioner in relation to the work executed for control room building at Muzaffarpur.

4. In this case the BHEL has filed a counter



affidavit and its stand is plain and simple that for the work in question for which a direction is being sought for making payment to the petitioner, there was no contract between the petitioner and BHEL and in fact the work in question was at that point of time being done by respondent no.5 and the petitioner was only a sub-contractor under respondent no.5.

5. Mr. Rakesh Singh, learned counsel appearing on behalf of BHEL in this regard has also explained that for the payment in question the petitioner was bound by the terms and conditions of its agreement with respondent no.5 because it was only after cancellation of the work order and the contract of the main contractor on 3.12.2005 that the petitioner was allotted certain left over work of respondent no.5 and for that work whatever payment was admissible to the petitioner has already been made. He has also submitted that when respondent no.5 had invoked arbitration clause and the work in question for which payment was being claimed



by the petitioner in this writ application is also subject matter of that arbitration proceeding, the BHEL cannot be compelled by the petitioner to make payment for the work in question, especially when for that part of the work there is no direct relationship between the petitioner and BHEL.

6. Mr. Satyavrat Verma, learned counsel on behalf of respondent no.5, on the other hand, has submitted that if BHEL had ultimately established its relationship with the petitioner after cancelling the contract and the work in question, it could not avoid the liability of payment on the ground of pendency of arbitration proceeding between BHEL and respondent no.5. Mr. Verma, therefore, in a guarded manner has sought to support the claim of the petitioner for getting payment.

7. In the considered opinion of this Court the issue involved as with regard to the prayer of the petitioner for a direction to BHEL to make payment of



five running account bills no. 1 to 5 for the work undertaken and completed during May, 2005 to December, 2005 has to be understood in the background of some of the admitted facts. It is not in dispute that on 28.4.2005 the respondent being the lowest bidder for the work contract of 400/220 KV Sub-station at Muzaffarpur was given a Letter of Intent alongwith the work order for execution of the said work. The petitioner, namely, Asha Construction Pvt. Ltd. in fact was approached by respondent no.5 to assist in the said project in capacity of sub-contractor. Such work of sub-contractor of the petitioner was also specifically reduced in writing in an agreement made on 5.5.2005 between the petitioner and respondent no.5, as contained in Annexure 2 to this writ petition. Clause 26 to 31 of the aforesaid agreement dated 5.5.2005 being relevant is reproduced hereinbelow:

“26. All type of insurance for the project, plant and equipments, labour and staff and third party etc. as per NIT shall be arranged by M/s Asha Constructions Pvt. Ltd. for total contract value of Rs. 11,91,00,138.00 of

SCC Pvt. Ltd. with BHEL on behalf of SCC Pvt. Ltd. at their own cost. M/s Asha construction Pvt. Ltd. shall also assist SCC Pvt. Ltd. in follow up with insurance company in case of any claim.

27. All payment shall be made to M/s Asha Constructions Pvt. Ltd. after deducting Income Tax as per rules within seven working days of receipt of payment by SCC Pvt. Ltd. after necessary deductions as per agreed terms and conditions. Payment for the quantities to M/s Asha Constructions Pvt. Ltd. shall be restricted to the quantities paid by BHEL to SCC Pvt. Ltd. but the payment in respect of extra items and claims shall be made as per clause 21 of this additional terms and conditions.

28. M/s Asha Constructions Pvt. Ltd. agreed that during the execution of the work, if in the opinion of the SCC Pvt. Ltd. the work in M/s Asha Constructions Pvt. Ltd. scope is not progressing in time or milestones are not being achieved with stipulated time frame or it is not possible to complete work in the balance period, then SCC Pvt. Ltd. will be at liberty to terminate their contract partially or in full by giving notice of 10 days in writing and the balance work shall be got completed by SCC Pvt. Ltd. at the risk and cost of M/s Asha Construction Pvt. Ltd.

29. M/s Asha Construction Pvt. Ltd. shall not further sublet the works allotted to them without prior written approval from SCC Pvt. Ltd.

30. M/s Asha Constructions Pvt. Ltd. have acquainted

themselves about site conditions and satisfied themselves fully before quoting. No claim whatsoever on this account will be entertained.

31. Settlement of Disputes:- Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing, whatsoever in any way arising out of or relating the contract, design, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the work, or execution or failure to execute the same, whether arising during the progress of the work or after completion or abandonment thereof shall be settled with mutual consensus, if not settled with mutual consensus then the disputes which are given in writing by M/s Asha Constructions Pvt. Ltd. shall be referred to the sole arbitrator appointed by the C.M.D. of SCC Pvt. Ltd. acting as such, at the time of dispute. There will be no objection to any such appointment that the arbitrator so appointed is any eminent engineer of good repute or a Corporation Officer that he had to deal with the matters to which the contract relates and that in the course of his duties as Corporation Officer he had expressed views on all/ or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason. C.M.D. SCC Pvt. Ltd. at the time such



transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a terms of this contract that no person other than a person appointed by the C.M.D. SCC Pvt. Ltd. should act as arbitrator and, if for any reason, that is not possible, the matter.”

(underlining for emphasis)

8. Thus from reading of the aforementioned clause of the agreement between the petitioner and respondent no.5 it would be very much clear that the petitioner M/s Asha Construction Pvt. Ltd. was a sub-constructor who had entered into agreement with the main contractor for completing the work allotted to the main contractor (respondent no.5) by BHEL and the liability of payment to the petitioner for its work done was on respondent no.5 and not on BHEL. In that view of the matter, this Court will have no difficulty in holding that for payment being claimed in this writ application there was no relationship between the petitioner and BHEL on the basis of which the petitioner

could have sought a direction from this Court for its being paid the amount involved in the first five running bill by BHEL.

9. The submission of Mr. Prasad, learned counsel for the petitioner, that such relationship was created on 20.10.2005 in view of the record note of discussion (Annexure 4) will also be of no avail because by that date also neither the petitioner was awarded the contract in question nor the earlier agreement of contract of BHEL with respondent no.5 was cancelled. Thus, whatever deliberation had taken place in the aforesaid meeting or whatever was recorded as with regard to completion of the work the status of the petitioner remains that of a sub-contractor working under the main contractor, respondent no.5.

10. This in fact becomes more clear from the subsequent event when on 23.11.2005 the controlling officials of BHEL have communicated to respondent no.5 that BHEL had decided to get the civil work



executed through any competent agency because respondent no.5 had not completed the work. In such notice of default served by the BHEL of respondent no.5 dated 23.11.2005, as contained in Annexure 8, it was clearly noted that it was respondent no.5 which was at fault in not completing the work within the schedule time as would be apparent from the contents of the aforementioned notice dated 23.11.2005 which reads as follows:

“2. After repeated follow-ups at various levels, M/s Shring Construction started the work at site through their Subcontractor M/s Asha Construction only by June '05. During the meeting on 11.5.2005 at Bhopal with your director Mr. Samir Jain, you had committed to take all necessary steps and course corrective actions to cover up the loss of time. Based on the firm commitment for work completion, Contract agreement was signed on 11.6.2005. Subsequently, your CMD on 17.6.2005 had agreed with ED(TBG) that the civil works of priority bays shall be taken up and completed as per mutually agreed Bar chart in spite of your commitment at the highest level, the progress was not at all satisfactory and a “Notice of default” and ‘show cause’ notice was issued by BHEL vide our letter dated 7.7.2005.

3. The non availability of reinforcement steel and non



deployment of manpower was a perennial complaint at site, for which M/s Shring did not take any action at any point of time. Therefore, another notice was issued vide fax dated 14.7.2005 informing that BHEL is force to supply reinforcement steel and the cost of reinforcement steel shall be recovered with handing charges from M/s Shring Construction because of their default. A Meeting was again called at Bhopal on 31.7.2005 and Mr. S.C.Jain in the MOM with ED (TBG) committed that the foundations of priority bays shall not extend beyond end Oct. '05.

4. However, vide fax message dated 14.10.2005 Shring Constructions Site In-charge threatened to stop the work on the plea that payment for their 3rd RA bill was delayed by a few days. BHEL replied vide tax dated 27.10.2005 that the delay in processing of the bill was due to incomplete documents and intervening holidays. BHEL advised them to submit the complete bills in time and also warned them not to issue such threats or take recourse to actions hindering the progress of work and affecting the contract schedule.

5. We have noted that the crux of the problem is:

- a. You have not posted competent site persons for executing the work of such large magnitude at site. There is no organization of M/s Shring visible at site.
- b. You have appointed a sub-contractor who is unable to handle the work given to them and you are unable to maintain the pace of work as per project schedule.
- c. you have not deployed adequate material, manpower

and T & P resources to match the committed schedules, milestones.

d. Though we have been releasing payments in time, you have not made prompt payments to your subcontractor and are withholding large sums of money due to which there have been disputes all the time between you and your subcontractor resulting in poor progress of work/stoppage of work at site.

6. BHEL officials again made a visit to site in Nov. and after assessing the alarming situation of dismal progress, called all the concerned parties for a meeting at the office of GM (Const) on 17.11.2005 at nokia. Please refer to the MOM between BHEL & Shring Construction dated 17th Nov. 2005 at Noida wherein it was assured by you that there would not be any stoppage of work at site and your internal difference with your subcontractor would be sorted out by 20.11.2005 and conveyed to BHEL it was further assured that your interest problems between you and your subcontractor with respect to work division would be amicably resolved and the work shall continue unhampered at site.

7. We have not received any communication from you in this regard even as on date. However, in the meantime, your subcontractor has taken recourse to legal action and a copy of the Court summons from Muzaffarpur court directing BHEL to depose before the Hon'ble court on 2.12.2005 has been received at site which is very disturbing. It is very obvious that you have not been able to sort out your issues with your subcontractor because of

which the work is continuously suffering on all fronts and the overall progress of this project of National importance is badly affected. It may even result in the total stoppage of the work now at site.”

11. The allegation of respondent no.5 against BHEL of not making payment including the amount of running bills and contrary allegations of BHEL against respondent no.5 leading to issuance of the notice of default by the BHEL to respondent no.5 on 23.11.2005 will again be a direct proof of the fact that for the period May, 2005 to December, 2005 the petitioner in absence of any direct relationship with BHEL and only a sub-contractor of respondent no.5 could not have even remotely claimed for getting payment from BHEL any and every payment in fact for the work done under the agreement between BHEL and respondent no.5 was to be made to respondent no.5 alone and that is how the BHEL also in the said notice had alleged that even when it was getting payment in time it was not clearing the bill of the petitioner. Thus, whatever anxiety was shown of



the officials of BHEL in the aforementioned notice of default cannot be read to be creating a relationship between the petitioner and BHEL even on 23.11.2005.

12. As a matter of fact the contract between BHEL and respondent no.5 was terminated on 3.12.2005 and only thereafter the petitioner was allotted the remaining work to be completed by BHEL and the petitioner had thereafter completed the work in the period between 3.12.2005 to 24.12.2005 and the payment of the amount of Rs.3,08,881/- was sought to be made as is apparent from the note-sheet of the Manager of BHEL, Muzaffarpur dated 2.6.2007 which for the sake of clarity and convenience is also quoted hereinbelow:

“ BHARAT HEAVY ELECTRICALS LTD.
TRANSMISSION BUSINESS GROUP- EASTERN
SECTOR
400/200 KV Switchyard at Muzaffarpur
Ref: TBES/Muz/CIVIL/ASHA/GRB/PMT
Date: 02/06/07
Sub: PAYMENT TO M/S ASHA CONSTRUCTION
PVT. LTD.

Works executed for Contract Room Building at Muzaffarpur

- 
- (1) We are executing 400/200 KV substation work at Muzaffarpur for PGCIL M/s Shring Construction Co. Pvt. Ltd. the main contractor for civil works was terminated on 3.12.2005 (Letter placed on RHS-1).
 - (2) There was tremendous pressure on BHEL by top echelon of PGCIL to continue the civil works without any interruption even in the period from Termination of contract of Shring Construction to Finalization of New Contract. Moreover the progress of civil work of control Room building was at critical stage and the completion of civil work of CRB was very crucial for commissioning of switchyard. We also felt the urgency to carry on with civil work of Control Room Building without any stoppage to meet the contractual obligation with PGCIL. The total stoppage of works by us could have been treated as the Breach of Contract by BHEL with PGCIL. We have approached to M/s Asha Construction to continue the civil works of Control Room Building till finalization of contract of civil works of Control Room Building i.e. till 24.12.2005. They had agreed to execute the work at rate of 5% less than the quoted rate of M/s Shring Construction (Placed on RHS-2).
 - (3) M/s Asha Construction had completed the work of Rs.309991 (Rs. Three Laksh Eight Thousand Eight Hundred and Eighty One only) from 3.12.2005 to 24.12.2005. It is also confirm by site that the

measurement recorded for the payment to M/s Asha Construction is not taken in any of other sub-contractors of Control Room Building i.e. M/s Yogendra Rai and M/s Shring Construction.

- (4) This amount is also billable to PGCIL as per our contract with customer. And the agency is also pressurizing hard on top bras of BHEL to release their long pending due amount on urgent basis.

In view of the above circumstances, it is proposed to pay Rs.308881 (Rs. Three lakhs Eight Thousand Eight Hundred and Eighty One only) to M/s Asha Construction Pvt. Ltd. against the work done for Control Room Building as full and final payment after taking NO DUES CERTIFICATE against this work.

Put up for post facto approval as proposed above, pleased.”

(underlining for emphasis)

13. Thus, if these facts are admitted facts and the petitioner wants to claim certain payment for running bills no. 1 to 5 for the work done by it in capacity of sub-contractor in the period May, 2005 to December, 2005 its remedy will be only by way of an arbitration as per Clause 31 of the agreement between the petitioner and respondent no.5, already quoted above. The petitioner in garb of creating a relationship with BHEL



on the basis of its later agreement entered into in December, 2005 cannot even maintain a writ petition because its main grievance for non-payment of running bill for the period May, 2005 to December, 2005 is actually directed against respondent no.5 a private person. In fact when in paragraph no.14 of the writ petition the petitioner itself had admitted to have submitted its running bill to respondent no.5 it cannot be heard to claim its payment from BHEL. To that extent the petitioner itself has also admitted in paragraphs no. 25 and 26 of the writ application that a contract between BHEL and the petitioner was signed on 25.1.2006 and for the work executed by the petitioner under agreement dated 25.1.2006 the petitioner had been paid the entire amount but the amount involved for the earlier running bills prior to its agreement when it had worked as sub contractor such payment was not made by BHEL.

14. At this stage it would be relevant to note that respondent no.5 has already invoked its arbitration



clause as against BHEL and the issue relating to either payment of first five running bills as being claimed by the petitioner in this writ application or termination of contract of respondent no.5 by BHEL on 3.12.2005 is a subject matter of that arbitration proceeding.

15. In that view of the matter, it has to be held that for payment claimed by the petitioner in this writ application against BHEL, there being no agreement oral or written between the petitioner and BHEL, the latter is not bound to make such payment to the petitioner on the strength of an agreement entered between the petitioner and respondent no.5 in capacity of sub-contractor and the contractor respectively. The petitioner being a sub-contractor in the relevant period i.e. in between May, 2005 to December, 2005 under the main contractor, respondent no.5, can never claim any payment directly from BHEL. The plea of respondent no.5 that the admissible payment should be paid by the BHEL to the petitioner also cannot be accepted because respondent

no.5 has already invoked arbitration proceeding and the matter is pending before the Arbitrator.

16. Judged in this background if the petitioner has certain claim for payment in respect of running bill nos. 1 to 5 it can be only against respondent no.5, the main contractor, with whom the petitioner had entered into agreement as a sub-contractor. BHEL in fact during its pendency of the arbitration proceeding against Respondent no. 5 the main contractor cannot be expected to discharge the liability of respondent no.5 in favour of the petitioner, especially when its stand on the five running bills in the counter affidavit is very clear and specific which reads as follows:

“4. That in this regard it is further stated that R.A.Bills No. 1 to 3 of the respondent no.5 were recorded in the measurement book and payment had been released. The R.A. Bill No.4 was submitted on 15.11.2005. The contract between BHEL and M/s SCCPL was terminated on 3.12.2005 due to slow progress of work by the respondent no.5 and other grounds which has been elaborated in detail in the Arbitration proceeding.

It would be pertinent to mention here that the payment was released to the sub-contractors of the respondent



no.5 i.e. Rs.35 lakhs to M/s ACCPL Rs.40 lakhs in favour of M/s Delco Constructions and Rs.10 lakh in favour of M/s SAAS Engineering out of the amount payable to respondent no.5 M/s SCCPL for the work done upto 3.12.2005 which was the date of termination of the contract. R.A.Bill No.5 was received on 23.1.2006 after the termination of contract and taking over of the balance work by BHEL at the risk and cost of M/s SCCPL. The R.A.Bill No.5 was having many false claim and claims were made for works not done by M/s SCCPL nor any supporting documents were submitted with the bill.”

17. This Court in fact having found that the writ application had remained pending for a pretty long period and that there was an arbitration clause in the agreement between the petitioner and respondent no.5 had also sought assistance from the learned counsel for respondent no.5 as to whether respondent no.5 was prepared to get the matter adjudicated through arbitration in terms of Clause 31 of its agreement with the petitioner.

18. Mr. Verma, learned counsel for Respondent no. 5 who has not filed any further affidavit, has

however produced only a copy of the instruction received by him from respondent no.5 which for the sake of clarity and convenience is quoted hereinbelow:

“ In view of the order of Hon’ble High Court of the judicature at Patna dated 16.1.2015, we want to make it clear that M/s Asha Construction Pvt. Ltd. was a sub-contractor of M/s Shring Construction Company Pvt. Ltd. for constructing part work of 440 KVA sub-station at Muzaffarpur (Bihar). This work was being executed by M/s BHEL (TBG) for M/s Power Grid Corporation of India.

During working on the project, there was no dispute on any matter between M/s Asha Construction Pvt. Ltd. and M/s Shring Construction Company Pvt. Ltd. however due to non payment from M/s BHEL (TBG) (main contractor), the payment of M/s Asha Construction Pvt. Ltd. could not be cleared inspite of the fact that some payment was made by BHEL to M/s Asha Construction Pvt. Ltd. directly of course with our consent. We were always in favour of the release of payment of the work carried out by M/s Asha Construction Pvt. Ltd. to them.

Thus it is only the stubborn attitude of M/s BHEL (TBG) only that payment of M/s Asha Construction Pvt. Ltd. is not released by M/s BHEL (TBG). They have neither released payment due to M/s Shring Construction Company Pvt. Ltd. Thus if some arbitrator is to be appointed it should be between M/s Asha Construction Pvt. Ltd. and M/s BHEL (TBG).

We hope our position will be clear now. It may further be made clear that arbitration between M/s Shring Construction Company Pvt. Ltd. and M/s BHEL (TBG) is pending for a long time and no sitting is taking place for years.

Further, our claim if any due to non-payment of R.A.Bill No.5 will be modified to the extent of payment (if released by order of the Hon'ble High Court) to M/s Asha Construction Pvt. Ltd., in our arbitration case with M/s BHEL (TBG) cited above."

19. From reading of the aforementioned instructions it is very clear that respondent no.5 is trying to not only complicate the issue but also making its desperate effort to get away from its own commitment made in the agreement entered with the petitioner on 5.5.2005. As noted above, there is no agreement between the petitioner and BHEL for the work in question for which payment is being claimed by the petitioner in this writ application and thus, there would be no question of there being any arbitration proceeding between the petitioner and BHEL.



20. In such circumstances, this Court will have no difficulty in holding that for the relief in question sought in this writ application the remedy for the petitioner will be an arbitration proceeding in terms of Clause 31 of its agreement with respondent no.5 dated 5.5.2005 and since respondent no.5 has got it conveyed through its counsel Mr. Verma to this Court that it is not prepared to refer the matter for arbitration, this Court will have no other option but to hold that though this writ petition against BHEL at the instance of the petitioner for the relief sought herein is not maintainable but at the same time for the relief of payment of five running bills claimed by the petitioner which he had allegedly completed in capacity of sub-contractor of respondent no.5, the main contractor, it can definitely now take recourse to the provisions of Section 11(5) of the Arbitration and Conciliation Act, 1996 by filing a request case before the appropriate High Court.

21. This writ application, accordingly, is disposed of with a liberty to the petitioner to invoke its arbitration clause against respondent no.5 and in the event of failure of respondent no.5 to refer the matter to the Arbitrator to take recourse to the remedy under section 11(5) of the Arbitration and Conciliation Act.

22. With the aforementioned observations, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--