

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1075 of 2015

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1. M/s Larsen & Toubro Limited a Company incorporated under the Indian Companies Act, 1913, having its registered office at L & T House, Ballard Estate, Mumbai- 400001 and its Railway Business Unit at 12/4, Delhi- Mathura Road, Near Sarai Khawaja Chowk, Faridabad, 121003 through its Project Director and authorized representative Anand Madhav Singh, son of late C.M.Singh, resident of Carnation, 501, Green Valley Sector 41-42, Faridabad- 121003
 2. S.Ravindra son of M.K. Seetharaman, resident of Pragathi No.37, II Main, I Cross Mathru Layout Yelahanka New Town, Bangalore- 560065

.... Petitioners

Versus

1. The Union of India through the Chairman Railway Board, Ministry of Railways, Rail Bhawan, New Delhi
2. The Chief Administrative Officer, Workshop Projects, East Central Railway, Chamber Bhawan, JC Road, Patna 800001
3. The Chief Mechanical Engineer-I, Workshop Projects, East Central Railway, Chamber Bhawan, JC Road, Patna 800001

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr.Adv.
Mr. Mrigank Mauli, Adv.
For the Respondent/s : Mr. Anil Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 27-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“(i) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railway authorities to pay to the petitioner the remainder of the admitted dues of Rs.139.58 crores towards the cost of the work undertaken for construction, erection and commissioning of the Cast Wheel Manufacturing Plant at Bela Village in Dariyapur Block of Saran District.

(ii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent



Railway authorities to issue the 'Completion Certificate' for Rail Wheel Plant (Bela) Saran at Chapra, Bihar- in terms of Clause 4.4.1 of the 'Special Conditions Contract'- whose not only erection is complete but 'Provisional Acceptance' of successfully running the Plant in presence of respondent Railway authorities was carried out way back from 27.5.2013 to 15.6.2013 with 85% Up-Time and liquidation of defects and the Plant having been taken over by the Railway authorities is being commercially run (217 heats being obtained), wheels being manufactured (3800 wheels) and being dispatched for use.

(iii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railway authorities to issue unconditional 'Completion Certificate' for Rail Wheel Plant (Bela) Saran at Chapra, Bihar without insisting on issuance of Bank Guarantee from the petitioner and asking the petitioner to apply for extension of time for completion of the contracted work.

(iv) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railway authorities to issue the 'Final Acceptance Certificate' in terms of Clause 7.11.3 of the 'Special Conditions Contract'- which otherwise ought to have been issued within 90 days of conduction of 'Performance Guarantee Test' (which has already been undertaken by MECON Ltd Ranchi between 9.9.13- 15.9.13 and 23.9.13- 26.9.13) and the consequential removal of pointed defects to the satisfaction of respondent authorities.

(v) To issue an appropriate writ(s), order(s), direction(s) in



the nature of writ of Mandamus directing the respondent Railway authorities to issue the 'Completion Certificate' for Rail Wheel Plant (Bela) Saran at Chapra, Bihar to make the final payments without insisting on issuance of Bank Guarantee.

(vi) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railway authorities to issue the 'Completion Certificate' for Rail Wheel Plant (Bela) saran at Chapra, Bihar holding that the petitioner is no longer liable towards the 'Maintenance and Guarantee' under Clause 7.25 of the 'Special Conditions of Contract' and 'Warranty' under Clause 7.26 of the 'Special Conditions of Contract' as the unit has long been commissioned as per their own admission and is in full commercial production since February, 2013.

(vii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railways authorities to pay interest on the aforesaid amount of Rs.139.58 crores in terms of the Interest Act and they be further directed to pay damages for the delayed payment and consequential financial burden dehors contractual commitment imposed on the writ petitioner.

(viii) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondent Railways authorities to return the Performance and Security Bank Guarantees furnished by the petitioner for amount of Rs.113.2 (approx) crores.”



Before Mr. Jitendra Singh, learned Senior counsel, could make his submission in support of the aforementioned prayer Mr. Anil Kumar Sinha, learned counsel appearing for the Railways, has raised the issue of maintainability of the writ application by taking a plea that the petitioners and the Railways are bound by an inter-party agreement providing for arbitration and therefore, whatever dispute is now sought to be raised by the petitioners in this writ application either with regard to non-issuance of completion certificate or resultant payment, can be only made subject matter of such arbitration proceeding.

Mr. Jitendra Singh, learned Senior counsel appearing on behalf of the petitioners, in reply to the aforementioned preliminary objection, has sought to explain that actually there is no dispute and in fact it is only inaction on the part of the respondents that they have not issuing the completion certificate and also withholding the admitted payment.

In the considered opinion of this court the matter is not so simple. The petitioners want completion certificate to be issued. The authorities have not issuing the same and for that they may have the valid justification or otherwise and therefore, the payment of the petitioners has been withheld on account of non-issuance of the completion certificate. All these matter infact

emanate from the interparte agreement in which there is arbitration clause.

Thus this Court would find it expedient in the ends of justice to direct the Railways to appoint an Arbitrator, if not already appointed, within a period of four weeks from the date of receipt of this order along with a claim petition of the petitioners.

It will be also open for the petitioners to file a compact claim for resolution of dispute which is to be referred to the Arbitrator and the period of four weeks for the Railways shall commence only after filing of the compact claim by the petitioners before the authorities of the Railways in terms of the clause of the agreement providing arbitration clause.

It also goes without saying that upon the matter being referred to the named Arbitrator as per the terms and conditions of the agreement, all efforts shall be made by the parties to ensure that the arbitration proceeding is concluded expeditiously and the Arbitrator shall also not lag behind on his part in expediting and concluding the arbitration proceeding.

With the aforementioned observation, this application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

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