THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P(C) No. 438 of 2014

Petitioner :

Shyamal Dey,
Son of Late Jadu Nath Dey, residing at A-19, Netaji Samabay Abas, Narayantala (West), P.O. Prafulla Kanan, P.S. Baguiati, Kolkata – 700 101, District 24 Parganas (North), West Bengal, Carrying on Business under Trade name M/s. S. A. Engineering as sole proprietor having its office at BD-456, 1st Floor, Sector-I, Salt Lake City, Kolkata-700 064.

-: Vrs. :-

Respondents :

1. M/s. National Buildings Construction Corporation Limited,
A Company incorporated under the Companies Act, 1956, having its registered office at NBCC Bhawan, Lodhi Road, New Delhi-110 003.

2. The General Manager (Engineering),
National Buildings Construction Corporation Limited, IBBF & JNNURM WORKS, Jackson Gate Building, Lenin Sarani, Agartala-799 001. Tripura State. (Previously of Dhaleswar, P.O. & P.S. Agartala, Tripura West, Pin- 799 007).

3. The Additional General Manager (W & C.),
National Buildings Construction Corporation Limited, IBBF & JNNURM WORKS, Jackson Gate Building, Lenin Sarani, Agartala- 799 001. Tripura State. (Previously of Dhaleswar, P.O. & P.S. Agartala, Tripura West, Pin- 799 007).

4. The Union of India,
Through the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi- 110 001.

5. Sri Sudip Saha,
Additoinal General Manager, National Buildings Construction Corporation Limited, IBBF & JNNURM WORKS, Jackson Gate Building, Lenin Sarani, Agartala-799 001. Tripura State. (Appointed by Hon'ble High Court of Tripura, Agartala).

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W.P(C) No. 440 of 2014

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B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. C. DAS

For the petitioner (in all the petitions) : Mr. S. K. Deb, Sr. Adv.
Mr. B. Debnath, Adv.
Mr. A. K. Deb, Adv.

For the respondents (in all the petitions) : Mr. A. Thakur, Adv.
Mr. P. Majumder, Adv.
Mr. J. Majunder, Adv.

Date of hearing & Judgment & Order : **4th February, 2015.**

Whether fit for reporting :

Yes	No

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

These three writ petitions are being disposed of by a common judgment since the factual situation and the legal issues involved are identical.

[2] Earlier the writ petitioner had filed three writ petitions being W.P(C) No.75 of 2014, W.P(c) No. 76 of 2014 and W. P(C) No. 77 of 2014 which were disposed of by a common order dated 11.06.2014 which reads as follows:

> **"11.06.2014**
>
> **The main prayer made by the petitioner in this petition is that some person other than the respondent no.2 be appointed to settle the accounts between the petitioner and respondent no.1 arising out of the contract entered into between them within a limited time frame as may be fixed by this Court.**
>
> **Learned counsel appearing for the parties have stated before us that they have agreed that instead of respondent no.2 the settlement of accounts may be carried out by Sri Sudip Saha who is presently posted as Additional General Manger (AGM) with the National Building Construction Corporation Ltd. (NBCC). The parties have also agreed that Mr. Saha will complete this work within a period of 3(three) months from today.**

> **In view of the agreement entered into between the parties, all the three petitions are disposed of with the following directions :**
>
> **(1) That Sri Sudip Saha, AGM of NBCC shall settle the accounts between the petitioner and respondent no.1 on or before 10th September, 2014.**
>
> **(2) The parties including the petitioner shall cooperate with Mr. Saha and shall file all additional claims and documents on which they rely upon latest by 30th June, 2014. The NBCC may in response thereto file its documents or material before 15th July, 2014.**
>
> **(3) Written submissions/oral arguments should be completed latest by 15th August so that Mr. Saha can dispose of the matter latest by 10th September, 2014.**
>
> **(4) Parties shall be at liberty to appear either in person or through counsel."**

[3] After the matter was sent to Mr. Saha with the consent of the parties he settled the accounts but allowed the claim of the NBCC and disallowed the claim of the petitioners herein and in this regard observed as follows:

> **"1.3.5 Since the amount of security deposit as well as performance bank guarantee (also part of SD) has been forfeited by the NBCC Ltd. and the same being not under Challenge in the appropriate legal forum of territorial jurisdiction i.e. Courts of Delhi who alone shall have exclusive jurisdiction in all matters arising under this contract, I do not consider that the security money as well as performance bank guarantee (part of SD) has been withheld by the NBCC Ltd. rather has been forfeited."**

[4] When accounts are being settled by consent of parties then the person settling the account can go into all issues including the issue whether the recission of contract is valid or not. He is not giving any legal decision which is binding on the party. This is a mere settlement of accounts and at this stage Mr. Saha was not required to decide the legal issue whether the recission of contract is legal or not. He is only required to settle the accounts.

It has been urged on behalf of the petitioners that instead of remanding the case to Mr. Saha it may be remanded to some other person since Mr. Saha has already expressed his opinion on the matter. We are unable to accept this submission. The order dated 11.06.2014 was passed with the consent of the parties. Mr. Saha has not been appointed as an Arbitrator or Umpire to settle the dispute. This settlement is not a binding legal settlement on either of the parties. The settlement will be binding only if the two parties agree to accept the settlement. There is nothing in the order dated 11.06.2014 which says that the settlement arrived at by Mr. Saha would be binding on the parties. If any party is aggrieved by such settlement or even without any such settlement, that party can approach the appropriate forum in accordance with law.

[5] We are also of the considered view that Mr. Saha should not have made the remarks which have been quoted hereinabove. Once the matter was referred to him, either he should have approached this Court for clarification of the order but he could not sit in judgment over the order passed by this Court. Since Mr. Saha has expressed his apology in writing to this Court we accept the same and do not wish to proceed further in the matter. We are, however, unable to accept the plea of the petitioner that this expression of Mr. Saha amounts to bias. In our opinion this may be a wrong decision on his part but there is no element of bias. Therefore, faced with the situation Mr. Deb stated that he would have no objection if the matter is remanded to Mr. Saha for decision of this issue also.

Therefore, Mr. Saha is directed to settle that portion of the accounts which he has not settled by the earlier report dated **9th September, 2014** within a period of 2(two) months from today after giving

both the parties a reasonable opportunity of being heard. Both the parties are directed to appear before Mr. Saha on 27th February, 2015.

[6] With these observations these writ petitions are disposed of. No order as to costs.

JUDGE **CHIEF JUSTICE**