

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Request Case No.16 of 2015**

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M/s Arjun Engicon Private Limited having registered office at J—117 P.C. Colony  
Kankarbag, P.O. P.S. Kankarbag District Patna

.... .... Contractor-Petitioner

Versus

1. The Union of India through the General Manager E.C, Railway At & P.O. Hajipur, District Vaishali
2. The Dy. Chief Engineer (Construction) E.C. Railway, At Dehri-on-Sone, P.O. Dalmia Nagar, District Rohtas
3. The Dy. Chief Engineer, (C) E.C. Railway Danapur, District Patna

.... ....Contractee-Respondents

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**Appearance :**

For the Petitioner : Mr. Nand Kishore Singh, Advocate

For the Respondents: Mr. Anil Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 03-03-2016**

Heard learned counsel for the petitioner and learned  
counsel for the respondent-Railway.

2. The present request application has been filed under  
Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short,  
“the Act”) for appointment of sole independent Arbitrator in view of  
Clause 64 of the General Conditions of Contract, 2008 (for short, “the  
GCC”) for adjudication of contractual disputes between the parties in  
connection with Agreement No. DCE/C/DOS/ARA SSM/agt 389  
dated 02.02.2007 and Agreement No. DCE/C/DNR/ARA SSM/agt  
413 dated 14.04.2010, executed for a total value of Rs. 86,59,799/-  
and Rs. 1,49,10,499/- respectively, for the work of construction of OH  
water tank and pump house at Sasaram, Nokha, Bikaramganj, Piro

and Garhani, in connection with the construction of a new BG Line between Ara and Sasaram.

3. According to the petitioner, pursuant to the agreement dated 02.02.2007, the petitioner-Company demanded the working designs but the respondent-Railway failed to provide the approved designs, work sites (except at two or three places), etc., preventing the petitioner from completing the work. In any event, the petitioner completed the work of more than Rs. 36,00,000/-, out of which on account payment of Rs. 31,54,784/- was made. Despite the failure on the part of the Railway to provide clear work sites and working designs, the authorities of the Railway served a 7 days' notice on the petitioner, followed by a 48 hours notice, and finally terminated the agreement without settlement of account. The petitioner, thereafter, claimed to be entitled for refund of the security amount deducted from on account bills, earnest money etc. and also for the final bills which had not been paid. Thereafter, the petitioner participated in a fresh tender for the same work which was awarded to it, and an agreement dated 14.04.2010 was executed for a total value of Rs. 1,49,10,499/- towards additional work. Once again, the Railway could not provide clear work sites, despite which the petitioner completed the work of more than Rs. 35,00,000/- but no payment was made despite repeated representations. As before, this agreement was also terminated by the



authorities leaving substantial amounts claimed as payable by the petitioner towards the bills for the work done, refund of performance guarantee and earnest money, etc. All of this gave rise to an arbitrable dispute between the parties, leading the petitioner to demand arbitration by invoking Clause 64 of the GCC through its notice dated 11.04.2015 addressed to the General Manager, E.C Railway, At & P.O. Hajipur, district Vaishali (Respondent No. 1) for constitution of an arbitral tribunal for resolution of the dispute between the parties, and such notice was delivered by speed post on 17.04.2015.

4. Learned counsel for the respondent-Railway, on the other hand, refers to paragraph 18 of the counter affidavit to assert that the petitioner's earlier demand for arbitration by its letter dated 12.03.2014 had been denied by the respondent in terms of letter dated 23.05.2014, stating reasons for the denial. Thereafter, the petitioner once again demanded arbitration by its letter dated 11.04.2015, but the respondents once again declined to accede to the petitioner's demand in terms of the letter dated 25.05.2015, and required the petitioner to submit a clear demand for arbitration with item-wise claims and disputes with reasons.

5. Having heard the parties and on careful consideration of the materials available on record, this Court is unable to appreciate the stand of the Railway. The petitioner's letter dated 11.04.2015



demanding arbitration was a detailed one, paragraph 11 whereof enumerates the various heads under which payment was claimed under both the agreements. In any event, it cannot be said that the said letter was not a valid demand for arbitration, as sought to be contended by the Railway, in view of the clear and specific request made in it by the petitioner for constituting an arbitral tribunal in terms of Clause 64 of the GCC. The Railway's stand that the petitioner's had not qualified the claims item-wise could not be a ground for not constituting an arbitral tribunal as the petitioner had certainly raised an arbitrable dispute.

6. Moreover, it is a matter of record that despite the petitioner's demand for arbitration having been received by the Railway on 17.04.2015, the Railway communicated the requirement for itemized claims in terms of the letter 25.05.2015 well beyond the permissible time limit of 30 days and even subsequent to the filing of the instant request petition.

7. It is well settled by the Apex Court in the case of *Datar Switchgears Ltd., vs. Tata Finance Ltd. and another* [(2000) 8 SCC 151] as well as in *Deep Trading Company vs. Indian Oil Corporation and others* [(2013) 4 SCC 35] that on failure to make appointment of Arbitrator pursuant to a notice by the claimant, the respondents lose their right to make the appointment once a Request Case has been

filed by the claimant. The Railway's response dated 25.05.2015 is thus of little moment, as such action has been taken after filing of the instant Request Case on 20.05.2015 and must therefore, be held to be of no consequence.

8. In view of the submissions made by learned counsel for the petitioner, this Court accordingly appoints Sri V. K. Sharma, a retired District Judge, residing at 202, Sanyal Enclave, Budh Marg, Patna 800 001 as the sole Arbitrator with respect to the disputes between the parties in accordance with the provisions of the Act.

9. The petitioner must approach the said Arbitrator within one month along with a certified copy of this judgment and the said Arbitrator will proceed with the adjudication accordingly. The fees of the Arbitrator shall abide by the Fourth Schedule of the Act, and shall be borne equally by the parties.

10. With the aforesaid directions, this Request Case is disposed of.

**(Vikash Jain, J)**

B.T/-

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