

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4092 of 2014

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M/S Kumar and Prabhakar - Siddharth - Triveni (JV), A Joint Venture Having Its Office At 301, Anand Shree Apartment, Road No. 1, North Patel Nagar, Patna - 8000024 Through Its Constituted Attorney Alok Prabhakar Son Of Late Sheo Nandan Prasad Resident Of Anand Shree Apartment, Road No. 1, North Patel Nagar, P.S. Patliputra, District - Patna

.... Petitioner/s

Versus

1. The Union of India, Ministry of Railway, through the General Manager, East Central Railway, Having Its Office at Hajipur (Vaishali)
2. The Chief Administrative Officer (S), Construction - East Central Railway, Mahendrughat, Patna
3. The Chief Engineer (S), East Central Railway, Mahendrughat, Patna
4. The Deputy Chief Engineer, Construction, Rajgir, East Central Railway, Having Its Office at Rajgir, Nalanda
5. The Chief Manager/Senior Manager, Punjab National Bank, East Gandhi Maidan, Patna

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Alok Kumar Agrawal, Advocate
For the Resp. Railway	:	Mr. Anil Kumar Sinha, Advocate
		Mr. Abhimanyu Deo, Advocate
For the Bank	:	Mr. Kumar Priya Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 28-06-2016

Heard learned counsel for the petitioner, learned counsel
for the respondent Railway and learned counsel for the respondent
Punjab National Bank.

2. I.A. No. 2604 of 2016 has been filed for amendment in
the writ petition by adding an alternative prayer as follows :-

“Para 1(v) : For issuance of appropriate
writ/order/direction appointing an independent



Arbitrator preferably a retired High Court Judge/District Judge to adjudicate the issue and pass the award in accordance with the provisions of Arbitration and Conciliation Act, 1996.”

3. Having regard to the nature of the prayer, I.A. No. 2604 of 2016 stands allowed and the petitioner is permitted to make the amendments appropriately in the writ petition.

4. The present writ petition has been filed for quashing the letter dated 13.02.2014 passed by the respondent no. 4 whereby he has terminated the contract of the petitioner with effect from 13.12.2013; for restraining the respondent authorities from encashing the Bank Guarantee of Rs. 91,81,620/- issued by Punjab National Bank, East Gandhi Maidan Branch, Patna by way of Performance Guarantee and also the Earnest Money deposited by the petitioner by way of fixed deposit amounting to Rs. 11,03,000/-; for directing the respondent authorities to measure the work done by the petitioner and consequently for payment of the outstanding bill.

5. At the very outset, learned counsel for the petitioner fairly concedes that remedy by way of arbitration is available for the reliefs sought herein and has accordingly, filed the interlocutory application aforesaid for appointment of an independent Arbitrator by this Court for settlement of its claims.

6. Learned counsel for the respondent-Railway has no



objection, in principle, to the prayer of the petitioners, though it is submitted that the petitioners ought to take appropriate steps for appointment of learned Arbitrator in accordance with Clause 64(3)(a)(ii) of the General Conditions of Contract, and invoke the provisions of the Arbitration and Conciliation Act, 1996.

7. Having heard the parties and on consideration of the facts and circumstances of the case, this Court is of the view that no useful purpose would be served in directing the petitioner to take recourse to the provisions of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator, which would merely delay the matter and cause multiplicity of proceedings.

8. In the interest of justice, therefore, and keeping in view the provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2015, this Court accordingly appoints Hon'ble Mr. Justice Shyam Kishore Sharma, a retired Judge of this Court as sole Arbitrator with respect to the dispute between the parties in accordance with the provisions of the Act.

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

10. With the aforesaid directions, the writ petition stands disposed of.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	11.07.2016
Transmission Date	-