

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.2 of 2015

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M/s Arjun Engicon Private Limited, having registered office at 117 P.C. Colony,
Kankarbagh, P.O,P.S. Kankarbagh, Distt. Patna.

.... Petitioner

Versus

1. The Union of India through the General Manager, E.C. Railway, At & P.O. Hajipur, Dist. Vaishali.
2. The Dy. Chief Engineer, E.C. Railway, At & P.O. Mugalsarai (Uttar Pradesh).
3. The DY.C.E./EC/CON/SOUTH E.C. Railway, Mahendrughat, Patna.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Nand Kishore Singh, Advocate

For the Respondents : Mr. Mahesh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the petitioner and learned
counsel for the Respondent Railway.

2. The present 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 the contractual disputes
between the parties in connection with Contract Agreement No.
ECR/CAO/CON/WT/AGT/SOUTH/108 dated 27.08.2012
executed for a total value of Rs. 3,21,24,582/- for the work of
construction of approach road and barrier at Road Over Bridge

over N.H. 30 at KM 4.465 between Garhani-Ara in connection with new BG line between Ara-SSM.

3. According to the petitioner, pursuant to an agreement executed between the petitioner and the Railway on 27.08.2012, the petitioner started the work. The date of completion which was to expire on 07.09.2012, was extended from time to time, finally up to 31.08.2014. The petitioner claimed that the delay in completion of the work was entirely attributable to the respondent Railway having failed to provide space for dumping of material, non-provision of working design and specification, non-availability of stone chips in Bihar and order for doing additional and extra work. Despite such problems, the petitioner continued working and completed the work amounting to Rs. 2,70,73,112/- which included additional and extra work beyond the agreement to the tune of Rs. 16,00,000/- The payment of running bills were however delayed, apart from the fact that certain unjustified deductions and retentions were made out of payments made. This led the petitioner to file a representation for resolving the disputes through mutual discussion in terms of Clause 63 of the GCC, which was however, rejected. Left with no alternative for settlement of its claims, therefore, the petitioner invoked Clause 64 of the GCC by its application dated 11.11.2014



before 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 disputes between the parties. The said notice was however not responded to for more than 30 days, leading to the present Request Case being filed by the petitioner for appointment of a sole arbitrator.

4. Learned counsel for the Respondent Railway refers to para 6 of the counter affidavit to state that steps have already been taken for constitution of the arbitral tribunal. Pursuant to the submission of settlement of claims by the petitioner, a panel of Railway officers has now been nominated as evident from letter No. ECR/CAO/CON/WT/S/108/MGS/1568 dated 09.04.2015 (Annexure-A).

6. The stand of the Railways must be noticed only to be rejected. 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 notice by the claimant, the respondents lose their right to make the appointment once a Request Case has been filed by the claimant. The nomination of the panel of Railway officers as indicated in the aforesaid letter of

the respondent Railway dated 09.04.2015 is thus of little moment as such action has been taken well after filing of the instant Request Case on 18.02.2015 and must therefore, be held as invalid.

7. 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.

8. The petitioner must approach the said Arbitrator within one month along with a certified copy of this order 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.

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

(Vikash Jain, J)

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