

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4217 of 2016

In

Civil Writ Jurisdiction Case No. 18697 of 2016

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Hindustan Steelworks Construction Limited, a company registered under the Companies Act, 1956 having its registered office at P-34A Garia Hat Road (South) Kolkata-700031 through its authorized representative and the head (Project) Patna, Shri Premangshu Saha Bhowmik, son of Late Nitya Gopal Saha Bhowmim, resident Hindustan Steelworks Construction Ltd. 3rd Floor, LDB Building, Budha Marg, Patna 800001.

.... Petitioner/s

Versus

1. The Union of India through the Chairman Railway Board, Ministry of Railways, Rail Bhawan, New Delhi
2. East Central Railway through the General Manager, ECR, Hajipur, Bihar
3. CAO, ECR, Mahendru Ghat, Patna
4. Chief Engineer (Con)/CPU, ECR, Mahendra Ghat, Patna
5. Deputy Chief Engineer (Con)/CPU, ECR, Mahendra Ghat, Patna

.... Opposite parties

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Appearance :

For the Petitioner/s : Mr. P.N. Shahi Sr. Advocate
Mr. Mrigank Mauli
Mr. Snaket
Mr. Prince Kumar Mishra

For the Respondent/s : Mr. Anil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL ORDER

2 21-12-2016 As prayed by the petitioner, let the defect(s), as pointed out by office, be removed in course of the day.

Heard Mr. Shahi for the petitioner and Mr. A.K. Sinha for the respondent-ECR.

The present application is filed for modification in the order dated 28.11.2016, whereby interim protection was granted to the petitioner for a period of 03 weeks.

It is submitted with reference to Annexure-2 that



soon after the order was passed on the writ petition, an application was filed before the respondent for appointment of the Arbitrator for resolution of the dispute. In spite of the said application having been filed, the respondent has, till date, failed to appoint the Arbitrator. It is submitted that the order dated 28.11.2016 be modified to the extent that until the Arbitrator is appointed by the respondent, the protection granted to the petitioner should continue.

Mr. A.K. Sinha conversely submits that under the relevant law, on an application being filed, an Arbitrator can be appointed within 30 days of such filing of the application. The said period has not till date expired. Referring to section 17 of the Arbitration and Conciliation Act, 1996, it is submitted that any such relief can be prayed for and granted by the Arbitrator on a consideration of the relevant facts placed before him.

Considering the facts and circumstances of the case, I allow this application and modify the order dated 28.11.2016 to the effect that until the appointment of the Arbitrator by the respondents in the light of the request (Annexure-2) filed the performance guarantee furnished by the petitioner shall not be encashed, if not already encashed. The order dated



28.11.2016 is modified to the extent indicated above.

Be it noted, Mr. Shahi appearing for the petitioner has stated before the Court that in case the validity of performance guarantee submitted by the petitioner expires, in the meanwhile, he shall take steps in advance for renewal thereof.

(Kishore Kumar Mandal, J)

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