IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.15 of 2016

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Ratna Infrastructure Projects Pvt. Ltd., a company incorporated under Companies Act, 1956 having its registered office at Plot No. 88, Nava Prashashan Nagar, Hyderabad Andhra Pradesh and represented by its resolved attorney Mr. Rakesh Kumar Agrawal, resident of 456, Samta Colony, Raipur C.G. - 492001.

.... Petitioner/s

Versus

1. The Union of India, through Chief Secretary, Railway Department, Govt. of India, Rail Bhawan, New Delhi.
2. The Chairman, Bhartiy Rail Bijlee Co. Ltd. Jain Bunglow, P.O. Dalmianagar, Dehri-On-Sone, District - Rohtas (Bihar).
3. The Deputy General Manager (Contract & Materials), Bharty Rail Bijlee Co. Ltd. Nabi Nagar Thermal Power Project, Nabinagar, District - Aurangabad (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Kamaluddin, Advocate
Mr. Surendra Singh, Advocate
Mr. Shashi Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 22-03-2017

This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator. The dispute has arisen in execution of a contract for civil work and Ash Dyke Package for Nabinagar Thermal Power Project.

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Seeking invocation of the arbitration clause, the applicant submitted an application before the competent authority and sought for reference of the matter to the Arbitrator under Clause 56 of the agreement. However, when nothing was done, the jurisdiction of this Court under Section 11(6) was invoked by the applicant by filing this application on 26th of July, 2016 and after the jurisdiction of this Court was invoked, it seems that the respondents on 28.11.2016 appointed an Arbitrator in accordance with the provisions of Clause 56.

2. However, petitioner submits that now in view of the judgment rendered by the Supreme Court in the case of **Bharat Sanchar Nigam Limited & another Vs. Motorola India Private Limited- AIR 2009 (2) SC 337** and orders passed by various Benches of this Court, one of which is Request Case No. 12 of 2016 (Kec-Delco-Varaha.Jv Vs. The General Manager, East Central Railways, Hajipur & Ors.), decided on 09.11.2016, once Arbitrator in accordance with the agreement is not appointed and the jurisdiction under Section 11 has been invoked, the right to appoint Arbitrator under the agreement stands forfeited and now it is for this Court to take steps as contemplated under Section 11. This law is also laid down in the case of **BSNL Vs. Dhanurdhar Champatiry (2010) 1 SCC 673**.

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3. Finding aforesaid to be the legal principle applicable in the matter, this application is allowed.

4. Accordingly, Hon'ble Justice (Retired) J.N. Singh is appointed as sole Arbitrator to resolve the dispute between the parties.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	28.03.2017
Transmission Date	

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