

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Request Case No.17 of 2017**

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S. P. Singla Construction Arvind Techno Engineers JV between SP Singla Constructions Pvt Ltd and Arvind Techno Engineers Pvt Ltd through its Authorised Signatory Shri A.K. Mirchandani S/o Late Shri K.L. Mirchandani, resident of Kothi No. 47, Panchkula, P.S. and District Panchkula, Haryana.

... .... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railways, having office at Rail Bhavan, Rafi Marg, New Delhi- 110001.
2. General Manager, East Central Railway, Hajipur having office at Mahendrughat, Patna- 800004.
3. Chief Engineer Admn. Officer (Const.), East Central Railway, Hajipur having office at Mahendrught, Patna- 800004.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Anirudh Wadhwa, Adv<br>Mr. Satyabir Bharti, Adv<br>Ms. Aparna Arun, Adv |
| For the Respondent/s | : | Mrs. Nivedita Nirbhikar, Adv                                                |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL JUDGMENT**

**Date: 26-07-2017**

Invoking the jurisdiction of this Court under Section 11 of the Arbitration & Conciliation Act, 1996, petitioner was awarded a contract for execution of the work in question on 12.12.2008 and the contract amount was Rs. 81,97,94,465/-. In the execution of the contract in question as certain dispute has arisen, this application has been filed seeking appointment of an Arbitrator.

The facts in brief further goes to show that invoking the arbitration agreement contemplated under Clause-63 and 64 of the agreement in question, petitioner demanded constitution of an Arbitration Tribunal on 03.07.2015. However, the Railway Administration, in spite of the demand made on 03.07.2015



did not take any action and in the meanwhile, in the month of July, 2016 proposed the name of the Arbitrators who were employees of the Railway Organization. In the meanwhile, the petitioner, in view of Amendment to the Arbitration & Conciliation Act, 1996 brought into force with effect from 23.10.2015 invoked the jurisdiction of this Court and on notice being issued, counter affidavit has been filed by the respondents and the only objection raised by them is that the petitioner having invoked the Arbitration Clause and having sought reference on 03.07.2015 i.e. much before the Amendment to the Act of 1996 which was brought into force on 23.10.2015 submitted that in view of Section 26 of the Arbitration & Conciliation (Amendment) Act, 2015, the arbitration has to be in accordance with the provisions of Clause-64 of the agreement and the Amendment brought into force with effect from 23.10.2015 will not be applicable.

It was emphasized by learned counsel for the petitioner that in this case, the Arbitration in question would be governed by the amending provisions which was brought into force on 23.10.2015 and thereafter, the Railway Administration cannot appoint or recommend the panel.

However, learned counsel for the respondents resisted the aforesaid claim and invited my attention to Section 26 of the alleged provision and the words used therein particularly the



words pertaining to ‘unless the parties otherwise agree’ and its application in the backdrop of clause 64.7 of the agreement in question. For the sake of convenience, at this stage, it would be appropriate to refer to Section 26 of the amending provision which was brought into force with effect from 23.10.2015 and clause 64.7 of the arbitration agreement which reads as under

*26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.*

*64.7. Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and any statutory modification thereof shall apply to the arbitration proceedings under this clause.*

Even though various submissions were made before me in support of the rival contentions but the question need not detail me any further as identical issue pertaining to interpretation of same clause 64.7 of the agreement have been undertaken and considered by the Delhi High Court and the Allahabad High Court.

In the case of ***Madhava Hytech-Rani(JV) versus Ircon International Limited***, 2016 SCC Online Del 6326, similar



objections were raised by the Railway Administration with reference to Section 26 of the Act and Clause 64.7 of the agreement has been considered and the learned Bench of the Delhi High Court dealt with the issue in para 22 in the following manner :-

*“The next issue to be addressed is whether the amendments introduced by the Amendment Act would be applicable in this case. Admittedly, the arbitration clause was invoked by Madhava prior to 23.10.2015-the date on which the Amendment Act came into force ; therefore, by virtue of Section 26 of the Amendment Act, the amendments to the Act would not be applicable to the arbitral proceedings in this case, unless the parties had agreed otherwise..”*

Thereafter, rejecting the contention by holding that in view of the qualifying words ‘unless the parties otherwise agree to’ and after taking note of clause 64.7 of the agreement, it is stated that the parties having agreed by this Clause to make any modification or any Amendment in the Act of 1996 applicable, similar objections were rejected.

The question was again considered by the Delhi High Court in the case of **Tantia-CCIL(JV) versus Union of India**, 2016 SCC Online Del 6165 and similar objections raised have been rejected as detailed herein above. The question was also considered by the Allahabad High Court in the case of **M/S Shiv Shakti Enterprises Ltd versus Union of India**, 2016 SCC Online All 848 and after taking note of the provisions of Section 26 of the amending



act, clause 64.7 of the agreement which was identical in nature in the said case also has held that in view of the wordings of Clause-64.7 and the provisions of Section 26 of the amending Act, the amended provision brought into force with effect from 23.10.2015 would apply in the case which was considered by the Allahabad High Court.

Having considered the rival contentions, I find that there is no reason to take a different view or disagree as decided by the Delhi High Court and the Allahabad High Court. In view of the above, the objections raised by the respondents are rejected.

Hon’ble Mr. Justice B.P. Singh, Former Judge, Supreme Court of India is appointed as arbitrator.

With the aforesaid, the application stands allowed and disposed of.

**(Rajendra Menon, CJ)**

Shageer/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 18/08/2017 |
| Transmission Date | NA         |

