

IN THE HIGH COURT OF JUDICATURE AT PATNA

Request Case No.4 of 2017

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M/s SREI Infrastructure Finance Limited, a company registered under the Company Act, 1956, having its registered office at Viswakarma 86C Topisa Road (South), Kolkata, through its constituted attorney, Mr. Pradeep Roy, s/o Sri Jagdish Roy, resident of Flat No. 106, A, Anandvatika Apartment, Nehru Nagar, Patna- 800013, P.S. Patliputra, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Information and Technology, Government of Bihar, Patna
2. The Principal Secretary, Department of Information and Technology, Government of Bihar, Patna
3. The Bihar State Electronics Development Corporation Limited, through its Managing Director, registered office at Beltron Bhawan, Shastri Nagar, Patna
4. The Managing Director, Bihar State Electronics Development Corporation Limited, Beltron Bhawan, Shastri Nagar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shakib Ayaz, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 28-06-2017

In the execution of Master Service Agreement dated 6th of September, 2007 with regard to providing various services particularly with regard to Service Centre Agency, known as SCA, a dispute has arisen between the parties and, therefore, petitioner



initially claimed certain benefit by filing a writ petition before this Court under Article 226 and 227 of the Constitution in C.W.J.C. No. 7959 of 2015 and by a detailed order passed on 18.12.2015 (Annexure-2) the said writ petition was disposed of directing for settlement of the undisputable claim of the parties. After this was done, and the claim of the petitioner was not settled in accordance with law, petitioner raised a claim with the department and thereafter this application.

Learned counsel for the petitioner invites my attention to Clause 8.1 of the agreement in question which contemplates a dispute resolution mechanism and argues that now in the light of the dispute between the parties, the matter should be referred for arbitration and further referring to Section 12(5) of the Arbitration and Conciliation Act, 1996 and the judgment rendered by the Supreme Court in the case of **M/s. Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Ltd.- AIR 2017 SC 939** argues that as the Arbitrator contemplated under Clause 8.1 (g) of the Arbitration Agreement is not a neutral person in view of the law laid down in the case of **Delhi Metro Rail Corporation** (supra), an independent Arbitrator should be appointed.

Learned counsel for the respondent refuted the aforesaid and invited my attention to the pleadings made by the petitioner in



C.W.J.C. No. 7959 of 2015 to make a contention that in the said case the petitioner has come out with the case that they do not have any efficacious alternate remedy and, therefore, now contending that an arbitration clause is available, does not like in the mouth of the petitioner and, therefore, this application is liable to be dismissed on that count alone. That apart, learned counsel argues that an Empowered Committee has submitted a report with regard to the dispute in question and once the report of the Empowered Committee is available, without impleading the Empowered Committee as a party, this application is not maintainable. He also points out that now even if arbitration is to be made, it should be made by the named Arbitrator as contemplated under Clause 8.1 (g) of the agreement in question.

Having heard learned counsel for the parties at length, I am of the considered view that all the three objections raised by the respondents are liable to be rejected. The petitioner initially invoked the extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution and what was stated by the respondents in the writ petition was that they do not have any efficacious alternate remedy for redressal of the dispute. It is indicated that the arbitration clause is not an efficacious remedy and merely because such an averment was made in the writ petition, the right accruing to the petitioner by virtue



of the Arbitration and Conciliation Act, 1996 and the Arbitration Agreement in question which is binding on the parties cannot be taken away.

That being so, I am not impressed with the first objection raised by the respondents. As far as impleading the Empowered Committee and the report of the Empowered Committee are concerned, they go to the merit of the dispute between the parties and in these proceedings under Section 11, this question is not to be adverted into. It is left open to be considered by the Arbitrator, if raised in the dispute to be adjudicated by the Arbitrator. As far as the contention of the respondents that the named Arbitrator under Clause (g) of Section 8.1. should now be appointed in view of the judgment of the Supreme Court in the case of **Delhi Metro Rail Corporation** (supra) and the object of Section 12 (5) of the Arbitration and Conciliation Act, 1996, it is clear that the Arbitrator named in the agreement in question is not an independent or neutral Arbitrator, therefore, in view of the law laid down in the case of **Delhi Metro Rail Corporation** (supra), an independent Arbitrator has to be appointed.

Accordingly, finding the claim made by the petitioner for appointment of an Arbitrator to be tenable and in accordance with law, this application is allowed. Justice (Retd.) J.N. Singh, a former



Judge of this Court, is appointed as an Arbitrator to adjudicate the dispute between the parties.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21.07.2017
Transmission Date	

