

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.729 of 2013
In
Civil Writ Jurisdiction Case No.15855 of 2011**

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1. The Municipal Commissioner, Patna Municipal Corporation, Patna, Bihar
.... Appellant/s

Versus

1. A 2 Z Infrastructure Ltd. Through Its Legal Executive , Mr. Ankur Gupta S/O Sri K.K. Gupta Having Its Registered Office At 205, Laxman Place, 19-Veer Sevarkar, Block - Shakarpur, Delhi. Regional Office At - A-2, Near Kaushik Apartment, Vatika Puri, Ambedkar Path Rukunpura, Bailey Road, Patna -1
2. The State Of Bihar through Principal Secretary, Urban Development And Housing Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Urban Development and Housing Department, Govt. Of Bihar, Patna
4. The District Magistrate, Patna, Bihar
5. Mayor, Patna Municipal Corporation, Patna, Bihar
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P.K.Shahi, Sr. Advocate
Mr Ranjeet Kumar Pandey
For the Respondent No.1 : Mr. Y.V.Giri, Sr. Advocate
Mr Anurag Saurav
Mr Arun Gaur
For the IDBI Bank : Mr Shivendra Roy

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-02-2017

After having given a considered hearing as well as having perused the previous orders and directions issued in this matter by an earlier Bench, the Court comes to an opinion that it is not a case where work has not been done by the private respondent in terms of the contract awarded by the appellant Patna Municipal Corporation. To save judicial time, the Court would not like to reproduce the



factual and legal details, which have already been dealt extensively by the learned Single Judge against whose order dated 18.5.2012, the present appeal has been filed.

The objection taken by the learned senior counsel representing the appellant that there are disputes of factual kind, and the claim not having been accepted, a writ ought not to have been issued etc. etc. have already been answered. It will be highly inequitable at the stage of appeal now to set aside the order of the learned Single Judge on the hyper technicality, especially with the kind of findings, which have been recorded by the learned Single Judge in his order/ judgment on the dispute.

The Court, therefore, comes to a considered opinion that at least 50% of the bills raised by the A2Z Infrastructure Limited, the company, should be settled and paid by the Corporation by 31st of March, 2017, with a clear rider that this payment as well as any left over payments and claims will be subject to outcome of an arbitration proceeding which the parties are willing to invoke and pursue.

A suggestion has been made that to expedite the matter and to further cut the delay, the dispute may be referred to the sole Arbitrator and the name suggested is of Hon'ble Justice R.K.Datta (Retd.). Since the parties do not seem to have any reservation with regard to the name of Justice Datta, let the dispute be referred to the



said sole Arbitrator. The remuneration of the Arbitrator will be fixed by the Arbitrator himself in accordance with the Arbitration and Conciliation Act, 1996 as amended up-to-date. 50% of the cost will be paid by the Municipal Corporation and the other 50% of the cost for arbitration will be borne by the private respondent, the company.

An I.A. No.9174 of 2013 has been filed by IDBI Bank wherein they have taken a stand that the company had maintained a Cash Credit Account, which is Account No.127655100000851, with IDBI, Red Cross Road, New Delhi. The prayer made in the I.A. on behalf of the Bank is that any payment, which may be made by the Corporation, should be credited into the said account because even an undertaking was given by the company in this regard.

A submission is made by learned senior counsel representing the company that the company is settling the dispute with the Bank and, therefore, the payment, which may be credited into the account maintained by the company, will be subject to the final settlement between the company and the Bank for which some judicial proceeding has also been initiated and negotiation is also on between the company and the Bank.

The submission in this regard both on behalf of the IDBI Bank as well as the learned senior counsel for the company has been noticed only for record, the Court will not get into the dispute between



the Bank and the company in the present appeal.

The learned senior counsel representing the appellant Corporation submits that any payment made into the account of the company maintained in the Bank will be subject to the final outcome of the arbitration. This Court does not have any reservation in accepting such a submission and stand of the Corporation because if the matter is being referred to the Arbitrator then final outcome of the award by the Arbitrator will surely have a bearing on the right of the parties with regard to the liability and the interim payment of 50%, which has been directed by this Court. This payment will be well protected by the Bank since the amount is going to be credited into the account of the company maintained in the Bank as an interim measure.

Both the parties are directed to appear before the sole Arbitrator appointed as above on 6.3.2016.

The appeal stands disposed of with the above direction.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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