

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.32 of 2017

Haskoning DHV Consulting Pvt. Ltd a company registered under Companies Act, 1956 having its registered office at Lower Ground Floor, Chamber No. 1, Plot No. 37, Street No. 2, East Guru Angad Nagar. Opp. Priyadarshini Vihar, Delhi- 110092 and its Corporate Office at Green Boulevard, Tower -B, Fourth Floor, Plot No. B- 9A, Sector-62,NOIDA, 201301 through its authorized director Sunil Kumar, son of Shri Bhrigu Nath Singh, working as Director in the corporate office, NOIDA.

... .. Petitioner/s

Versus

Bihar Urban Infrastructure Development Corporation Ltd. through its Managing Director, 2nd Floor, Khadya Bhawan (Bihar State Food and Civil Supplies Corporation Ltd. Premises), Road No.- 2, Daroge Prasad Rai Path, R- Block, Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajdeep Panda Mr. Sanjam Chawla Mr. Ajay Kumar Sinha Mr. Sachindra Tiwari, Adv.
For the Respondent/s	:	Mr. Rabindra Kumar Priyadarshi, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 08-12-2017

Seeking constitution of an Arbitral Tribunal with regard to resolution of dispute that has arisen in execution of an agreement entered into between the parties, for the purpose of providing technical support for Review of Master Plans and Detailed Project Reports, this application has been filed invoking jurisdiction of this Court under Clause 11 of the Arbitration and Conciliation Act, 1996. Clause 9.2 of the agreement in question, i.e. the arbitration agreement, reads as under:



"9.2- Any dispute between the Parties as to matters arising pursuant to this Contract, which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement, may be submitted by either Party for settlement. If the dispute(s) is not resolved amicably then it shall be referred to arbitration and shall be dealt as per the provisions of the arbitration & conciliation Act, 1996.

The Arbitration and Conciliation Act 1996 and the rules made there under and any statutory modification or re-enactments thereof, shall apply to the arbitration proceedings. The venue of the arbitration shall be Patna, Bihar. Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published; the Consultant shall continue to perform all its obligations under Agreement without prejudice of final adjustment in accordance with such award."

On notice being issued, the only objection raised by the respondents is that the petitioners have a remedy of invoking the jurisdiction of Bihar Public Works Contract Dispute Tribunal Act. Similar arguments advanced with regard to availability of the remedy under the B.P.W.C.D.A.T. Act, 2008 has been indicated by a Bench of this Court while hearing Request Case No.14 of 2016 and by a detailed order dated 20th of October, 2016 in the case of SDB SPS (JV). Vs. Bihar Rajya Pul Nirman Nigam, similar



objections have been raised. That apart, another Bench of this Court also considered the same issue and rejected identical objections in Request Case No.8 of 2016 by another order dated 19.4.2017 and following these orders a number of request cases, being Request Case No.118 of 2017 and other cases, were decided by a consolidated order passed on 8.9.2017. The objection raised having already been rejected, now the respondents point out that an S.L.P. filed in the matter, based on similar views expressed by the Delhi High Court in Arbitration Petition No.157 of 2016 Patna Water Supply Distribution Networks Private Limited Vs. Bihar Urban Infrastructure Development Corporation Limited & Anr. is pending before the Hon'ble Supreme Court and, therefore, hearing in the matter be deferred.

This Court is apprised of the position that since June, 2017 the matter is being adjourned and the Court is informed that when the S.L.P. came up for consideration before the Hon'ble Supreme Court on 13th of October, 2017, the matter was adjourned at the instance of the appellants in the said case, namely Patna Water Supply Distribution Networks Private Limited. That apart, learned counsel appearing for the petitioner invites my attention to the order dated 8.9.2017 of this Court in Request Case No.118 of 2017 and points out that similar objections with regard to pendency



of the S.L.P. has been rejected and this Court has held that merely because the S.L.P. is pending, hearing in the matter cannot be adjourned.

Keeping in view all these factors, I am of the considered view that now, once the issue in question has already been decided by this Court in series of cases, as are referred to hereinabove, there is no reason for adjourning the matter.

Accordingly, the application is allowed. Hon'ble Justice (Retd.) R.K. Datta, a retired Judge of this Court, is appointed as the Arbitrator to adjudicate the issue between the parties.

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

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.12.2017
Transmission Date	

