

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16071 of 2009

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M/s Progressive Construction Ltd., A Company registered under the Companies Act, 1956 having its Registered Office at 7th Floor, Raghava Block, Raghava Ratna Towers, Chirag Ali Lane, Nampally, Hyderabad-500001 (Andhra Pradesh) through its Managing Director Sri Y. Rajendra Babu, son of Sri S.R.K. Prasad, R/O Jalalgarh Camp, Progressive Construction Ltd., NH-57, P.S. Araria, District Araria.

..... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Shipping, Surface Transport and National Highway, New Delhi
2. The Managing Director, National Highway Authority of India, G-5 And 6, Sector-10 Dwarka, New Delhi- 110057
3. The Project Director, National Highway Authority, Project Implementation Unit, Araria House of Sri Sikandra Singh, Sahibaan Hata, Near Mahanand Colony, Purnea, Bihar
4. The General Manager (EW-III), National Highway Authority of India, G-5 and 6, Sector- 10 Dwarka, New Delhi- 110057

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MRIGANK MAULI, Advocate
Mr. Prince Kumar Mishra, Adv
Mr. Sanket, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 04-05-2018

The present writ petition has been filed for the following reliefs—

- (i) *For issuance of writ in the nature of certiorari quashing the letter no. 735 dated 20.07.2009 whereby a totally new interpretation has been given to the price escalation sub-clauses 70.1, 70.2 and 70.3 of the contract with regard to calculation of bitumen, cement and steel.*



- (ii) *For issuance of writ in the nature of mandamus restraining the respondent National Highway Authority of India (hereinafter referred to as 'NHAI') from making any deduction with regard to claim of excess payment having been made under the previous interpretation of Note to Clause 70.3(b)(viii) of the Contract Agreement or making claims of refund with regard to previous payments of the Running Account (hereinafter referred to as 'RA') Bills.*
- (iii) *For issuance of writ in the nature of mandamus directing the respondent NHAI to consider the actual price incurred for calculating the percentages of steel, cement and bitumen and not any notional value for calculating the percentage component of bitumen, cement and steel being X%, Y% and Z% in Clause-70.3(b)(viii).*

2. At the very outset learned counsel for the petitioner fairly states that the present dispute may be redressed through the forum of arbitration contemplated in terms of Clause 67 of the agreement between the parties. It is therefore, submitted that the issues in the present writ petition need not be decided if liberty is granted to the petitioner to invoke the forum of arbitration.

3. None appears on behalf of the respondents when the matter is called.

4. Having regard to the stand of the petitioner, the writ petition stands disposed of with liberty to the petitioner to invoke the forum of



arbitration in accordance with law.

5. It is made clear that this Court is not expressing any opinion on the merits of the claim of the petitioner.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2018
Transmission Date	NA

