

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.920 of 2017

arising out of

Civil Writ Jurisdiction Case No.5076 of 2016

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1. The Union of India through its Secretary, Railway Department, New Delhi.
 2. The Chief Administrative Officer, Rail Wheel Plant, Bela, District- Saran (Chapra) -841221.
 3. The Chief Mechanical Engineer, Rail Wheel Plant, Bela, District- Saran (Chapra) -841221.
 4. The Deputy Chief Mechanical Engineer- II, Rail Wheel Plant, Bela, (Chapra), P.O.- Arvind Nagar Block, Dariapur, District- Saran (Chapra) -841221.
 5. The Assistant Security Commissioner, Rail Way Protection Force, Rail Wheel Plant Bela (Saran).
 6. The Deputy Chief Mechanical Engineer- II, Rail Wheel Plant, Bela, Saran, (Chapra).
 7. The Supervision Officer, Rail Wheel Plant, Bela (Saran).

... .. Appellant/s

Versus

M/s Goswami Society Security Service Pvt. Ltd., through its Director Kumar Udhav Goswami, Gola Banch Road, Bhayan Sah Market, Ward No. 19, Near Vanijya College, Muzaffarpur- 842001

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dr. Anand Kumar, Advocate

For the Respondent/s : Mr. Shashi Bhushan Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-02-2018

Re.: Interlocutory Application No.4322 of 2017

Delay of 63 days in filing of the Letters Patent Appeal is condoned.

Interlocutory Application stands allowed and disposed of.



Re.: Letters Patent Appeal No.920 of 2017

Having heard learned counsel for the parties, we find that in Civil Writ Jurisdiction Case No.5076 of 2016 on 15.03.2017, the learned Writ Court has, after taking note of Clause 63, 64(1) to 64(7) of the agreement entered into between the parties, appointed an Arbitrator.

In our considered view, the arbitration clause in the agreement could be invoked and an Arbitrator appointed only accordance to the provisions contained in the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). Pre-condition for reference to an Arbitrator has to be complied with and then only an Arbitrator appointed that also in exercise of powers by the designated Court under Section 11 of the Act. In doing so, in a writ petition under Article 226 of the Constitution, we feel that the learned Writ Court has acted in excess of its jurisdiction and, therefore, the order appointing Arbitrator, in our considered view, would not be sustainable. In case, the learned Writ Court found that there was an arbitration clause for resolution of the dispute, the learned Writ Court should have relegated the writ petitioner to take recourse to the remedy available under Section 11 of the Act. To that effect, there being an error in the



order passed, we have no option, but to allow this appeal to that extent.

That apart, learned counsel for the respondent-writ petitioner argued that admitted claim which was not disputed could have been allowed by the Writ Court which has not been considered.

If that be so, we direct that the matter be placed before the learned Writ Court. CWJC No.5076 of 2016 is restored to its original file and the learned Writ Court may look into the question of admissible claim and direction, if any, that can be issued for payment of admissible claim to the petitioner. To that extent, we remand the matter back to the learned Writ Court.

Accordingly, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.02.2018
Transmission Date	

