

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.12029 of 2018

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The Braithwaite Burn and Jessop Construction Limited a company Registered under the Companies Act, 1956 having its registered office at 27, Rajendra Nath Mukherjee Road, P.O. Box No. 264, Kolkata- through its authorized representative and the Deputy Manager (P & A), Shri Samir Kumar Sen, S/o Late Sudhir Chandra Sen, R/o B.B.J. Construction Company Limited, 27 R.N. Mukherjee Road, Kolkata- 1.

.... .... Petitioner/s

Versus

1. The East Central Railway through General Manager, East Central Railway, Hajipur, Bihar.
2. Chief Mechanical Engineer, East Central Railway, Hajipur, Bihar.
3. Chief Mechanical Engineer, Freight, East Central Railways, Hajipur, Bihar.
4. Senior Divisional Mechanical Engineer, DRM Building, East Central Railways, Mughalsarai, Chandauli- 232101, U.P.
5. The Manager, Canara Bank, Prime Corporate Branch, 21, Camac Street, Kolkata- 700016.

.... .... Respondent/s

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#### Appearance :

For the Petitioner/s : Mr. P.N. Shani, Sr. Advocate  
Mr. Mrigank Muli,  
Mr. Sanket,  
Mr. Prince Kumar Mishra, Advocates

For the Respondent/s : Dr. Anshuman Singh, Adv

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 04-07-2018**

The present writ petition has been filed for prohibiting the respondents to act upon the letter No. RS/61/BOXN/U/L Rep/BBUNL dated 19.06.2018 whereby and whereunder the Tender No. ECR/MEC/WAG/463/B&C/MGS/2 relating to repair of 3400 'C' category and 10500 'B' category unloaded wagons of MGS is to be



terminated within seven days; and for connected reliefs.

2. At the very outset, learned counsel for the respondents states on instruction that the writ petition has become infructuous as the subject agreement with the petitioner has since been terminated on 03.07.2018.

3. Mr. P.N. Shahi, learned Senior Counsel for the petitioner with usual fairness does not dispute the statement made on behalf of the respondents. It is however submitted that the petitioner in such event would be ready and willing to pursue the matter by invoking arbitration clause in the agreement within a reasonable time. It is however, prayed that during the interregnum the respondent-East Central Railway may be directed to refrain from encashing the performance guarantee or take any action with regard to any other security as may have been furnished by the petitioner.

4. Having regard to the respective stand of the parties, the writ petition is disposed of granting liberty to the petitioner to take recourse to the arbitration clause under the agreement within a period of three weeks from today. In such event, considering that the petitioner is an instrumentality of the State, the respondents are directed to refrain from encashing the performance guarantee submitted by the petitioner or any other security as may have been deposited by the petitioner for a period of three weeks, is not already



so done, to enable the petitioner to seek redressal through arbitration.

5. The writ petition stands disposed of with the aforesaid observations and directions.

**(Vikash Jain, J)**

Chandran/BT

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 09.07.2018 |
| Transmission Date | NA         |

