

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2626 of 2018

IN

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, son of late Sudhir Chandra Sen, resident of B.B.J. Construction Company Limited, 27, R.N. Mukherjee Road, Kolkata-1.

.... Petitioner

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, East Central Railway, Hajipur, Bihar
4. Senior Divisional Mechanical Engineer, DRM Building, East Central Railway, Mughalsarai, Chandauli 232101, U.P.
5. The Manager, Canara Bank, Prime Corporate Branch, 21, Camac Street, Kolkata – 700 016,

.... Respondents

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Appearance:

For the Petitioner : Mr. P.N. Sahi, Sr. Advocate
For the Bank : Mr. Rajan Ghoshrahe, Advocate
For the Railways : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-07-2018

As prayed, learned counsel for the petitioner is permitted to remove the defects in course of the day.

2. Learned counsel for the petitioner prays that the matter may be taken up for disposal today itself, the urgency being that the period for which the respondents were directed to refrain from encashing the performance guarantee or any other security for a period of three weeks in terms of the judgment dated 04.07.2018 in CWJC No. 12029 of 2018, expires today.



3. It is submitted that pursuant to the aforesaid judgment dated 04.07.2018, the petitioner has invoked arbitration by letter dated 11.07.2018 (Annexure-P/2) and suggested the names of Arbitrators with a request to the respondent Railway to constitute the arbitral tribunal. It is submitted that the petitioner has thus complied with the terms of the judgment and has done its part, but any delay in constituting the arbitral tribunal by the respondents may cause irreparable injury to the petitioner as the respondents may proceed to encash the performance guarantee or any other security.

4. Learned counsel for the respondents appears and has been heard.

5. Having regard to the nature of the apprehension of the petitioner, the judgment dated 04.07.2018 is modified to the extent that the direction to the respondents refraining from encashing the performance guarantee or any other security of the petitioner shall stand extended upto the time when the respondents constitute the arbitral tribunal, if not already so constituted.

6. Learned counsel for the petitioner undertakes that the validity of the performance guarantee or any other security will continue to be extended.

7. MJC No. 2626 of 2018 stands disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2018
Transmission Date	NA

