

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No. 1323 of 2018**

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M/s Vishal Builtech India Pvt. Ltd. having registered office at L.G.  
1 & 2 Majestic Plaza, West Boring Canal Road, P.O. S.K. Puri  
District Patna through its Director.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway at  
& P.O. Hajipur, District Vaishali.
2. The CAO, E.C. Railway, at Mahendrughat, P.O. District Patna.
3. Dy Chief Engineer Con E.C. Railway Samastipur.
4. The Hon'ble Patna High Court through Registrar General  
(Administrative Side) .

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Nand Kishore Singh, Advocate

For the Railways : Mr. S.D. Sanjay, Sr. Advocate (ASG)

: Mrs. Binita Singh, Advocate

For the High Court : Mr. Piyush Lall, Advocate

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**and**

**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)**

**Date : 03-08-2018**

We have perused the records of this case and have also  
perused the response of the District Judge, Patna which has been  
kept at Flag “D” & “E”.

This application has been filed under Section 15(5) of  
the Commercial Courts, Commercial Division and Commercial  
Appellate Division of High Courts Act, 2015 (hereinafter referred



to as the “Act”) for transfer of Miscellaneous Arbitration Case No. 01/2016 from the Court of Additional District Judge-V, Patna to the Commercial Court constituted under Section 3 of the Act.

The petitioner has filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Patna with a prayer to set aside the Award dated 17.12.2015 rendered by Arbitral Tribunal on several grounds which is not required to be dealt with in detail and that does not form issue which requires to be decided in the present proceeding.

The petitioner has made a claim before the Arbitral Tribunal which was for more than Rs. 1,00,000,00/- (one crore) but by the concerned Award only an amount of Rs. 43,27,761.61/- has been allowed. The claim of the petitioner has been valued in the petition filed under Section 34 of the Act (a copy of which has been appended as Annexure-1) at Rs. 11,70,14,631/-, but, on account of the fact that the Award is for Rs. 43,17,761.61/- the petition is valued at Rs. 43,28,761.61/-. However, since claim has been valued at more than Rs. 1,00,000,00/- (one crore) as stated above, according to the petitioner the case has to be heard by a Commercial Court who is District Judge notified as per the notification issued by the Patna High Court.



The case, in fact, a petition was filed before the Commercial Court, i.e., the District Judge, Patna but the same was transferred by the District Judge to the Court of the Additional District Judge-V, Patna after registering and numbered as Miscellaneous Arbitration Case No. 01/2016. The petitioner filed an application vide Annexure-2 before the Additional District Judge-V, Patna holding that as per the provisions contained under the Act jurisdiction of Commercial Courts would be the Commercial Court notified under the Act, however, by the order dated 14.09.2017, the case has been transferred due to inadvertence in routine matter.

We have perused the records of the case from which it appears that after filing of such petition the Additional District Judge-V, Patna wrote a letter dated 30.01.2018 to the District and Sessions Judge, Patna stating that the petition has been filed that the case is triable exclusively by the Commercial court as provided under the Act and further that the District Judge, Patna has been notified by the Patna High Court as Commercial Court for Patna Division. Therefore, a request was made to the District Judge to issue directions regarding return of the case to his Court, however, the District & Sessions Judge, Patna replied vide a letter to him dated 03.02.2018 informing him that he has orally called for the



records of Arbitration Miscellaneous Case No. 01/2016 filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 and has come to the conclusion that Award dated 17.12.2015 passed by the Arbitrator has been challenged which has arisen out of Request Case No. 06/2013, hence, the said matter does not come under the purview of the Commercial Court.

This is the reason why the present case has been filed by the petitioner for transferring the concerned case to the Commercial Court.

We have heard learned counsel for the petitioner, Mr. Nand Kishore Singh as well as learned Additional Solicitor General, Mr. S.D. Sanjay who has appeared for the Department of Railways along with Mrs. Binita Singh, learned counsel and also Mr. Piyush Lall, learned counsel for the Patna High Court and have perused the records of the case.

From perusal of Section 2(1) conjointly along with Section 12 of the Act there is no dispute that what would be the specified value for hearing of the matter by a Commercial Court as that has to be a claim or the money sought to be recovered in a suit or application inclusive of interest, if any, computed up to the date of filing of the suit or the application, and if such value is Rs. 1,00,000,00/- (one crore) or higher then the matter could be



necessarily required to be heard by a Commercial Court as the same becomes a commercial dispute as per Section 6 of the Act.

So far the arbitration cases are concerned, jurisdiction has been provided under Section 10 of the Act. The relevant provision is extracted as under:-

**“10. Jurisdiction in respect of arbitration matters:-** Where the subject-matter of an arbitration is commercial dispute of a Specified Value and--

(1) xxxxx

(2) xxxxx

(3) *If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal Civil Court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”*

From perusal of the aforesaid, it is apparent that if the subject-matter of arbitration is a commercial dispute of specified value and if such arbitration is other than international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of Arbitration and Conciliation Act, 1996 that would ordinarily lie before any Principal Civil Court of original jurisdiction not being High Court, shall be filed, heard



and disposed of by Commercial Court exercising territorial jurisdiction.

Thus, it is clear from the above that the fact that the Arbitral Tribunal was constituted by the High Court in a request case filed by any of the parties, would not take away the jurisdiction from the Commercial Court.

In our considered view, such view expressed by District Judge, Patna in his letter has no foundation.

So far specified value is concerned, since the claim is admittedly of more than Rs. 1,00,000,00/- (one crore), it has rightly been agreed by learned Additional Solicitor General also that in such cases commercial dispute has to be decided by the Commercial Court formed and constituted under the Act.

So far constitution of Commercial Court is concerned, Mr. Piyush Lall, learned counsel has produced a copy of the minutes of the meeting of the Committee formed to consider the matter related to the establishment of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court held on 24.08.2016. The committee had come to the conclusion that there was no requirement to constitute exclusive court for determination of commercial disputes in each district in the State. However, the recommendation was to



constitute the Courts at nine Commissionerate level, such as, Patna, Magadh, Tirhut, Saran, Bhagalpur, Monghyr, Purnea, Darbhanga, Koshi and the District Judges of the abovementioned stations be constituted as Commercial Courts for the respective local limits of the Commissionerate to discharge the duties of Commercial Court in addition to their normal duties. The recommendation made by the Committee was accepted by the Standing Committee of the High Court and, thereafter, the State Government has come up with a Notification dated 3<sup>rd</sup> March, 2017 constituting the Commercial Court in the District Civil Courts constituted under all the divisional headquarters of the State to hear the cases of commercial dispute of the value of Rs. 1,00,000,00/- (one crore) and above.

In such a situation, there is no ambiguity at all that, since the specified value, i.e., the claim of the petitioner is more than Rs. 1,00,000,00/- (one crore) and the District Judge, Patna has already been notified as the Commercial Court for the Patna Division, only he would have the jurisdiction to hear, consider and decide the concerned matter.

However, since he has decided otherwise, a petition has been filed under Section 15(5) of the Act wherein it stands incorporated that on application of any of the parties to the suit



may file case for withdrawal of such suit or application from the Court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court. Such power has been conferred upon the Commercial Appellate Division of the High Court and, as such, this Bench has heard the matter.

In view of the consideration as above, we are of the view that it is a fit case which requires to be transferred to the Commercial Court. Accordingly, we direct the Arbitration Miscellaneous Case No. 01/2016 to be transferred from the Court of Additional District & Sessions Judge-V, Patna to the Court of Commercial Court which is the District Judge, Patna.

In the result, the petition stands allowed.

**(Dr. Ravi Ranjan, J)**

**(S. Kumar, J)**

Vikash/-

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| <b>AFR/NAFR</b>          | AFR        |
| <b>CAV DATE</b>          | NA         |
| <b>Uploading Date</b>    | 22.11.2018 |
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