

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.175 of 2018

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The Braithwaite Burn and Jessop Construction Company 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 and 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 Union of India through the Chairman Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.,
2. The East Central Railway through General Manager, East Central Railway, Hajipur, Bihar.
3. Chief Mechanical Engineer, East Central Railway, Hajipur, Bihar.
4. Chief Mechanical Engineer, Freight, East Central Railways, Hajipur, Bihar
5. Senior Divisional Mechanical Engineer, DRM Building, East Central Railways, Mughalsarai, Chandauli-232101, U.P..
6. The Manager Canara bank, Prime Corporate Branch, 21, Camac Street, Kolkata-700016.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr. Sanket, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Advocate Mr. Sri Ram Krishna, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 03-05-2019 Heard learned counsel for the applicant and the learned counsel for the respondent-Railways.

An agreement with regard to the repair of Wagons was entered into, the contract whereof was awarded to the applicant. The dispute has arisen between the parties which remains unresolved even though the respondent -Railways has filed a counter affidavit contending that it has already appointed an Arbitrator as per the terms of the agreement clause who can continue to resolve the dispute as indicated in the communication dated 7th of February, 2019.



Having considered the submissions raised, I find that on 11th of July, 2018, the applicant had put the respondent-Railways to notice calling upon them to proceed in the matter and the demand was raised, but no action being taken and the agreement having been terminated a request was made to settle the matter through arbitration.

Admittedly, the Arbitrator was not appointed within the statutory period as contemplated under sub-section (5) of Section 11 of the Arbitration and Conciliation Act, 1996. Consequently, the present application was moved invoking the jurisdiction of this Court under Section 11(6) of the 1996 Act.

The counter affidavit filed on behalf of the Railway also raises a counter claim against the applicant.

It is by now settled in the case of **Deep Trading Company Versus Indian Oil Corporation and others**, reported in (2013) 4 SCC 35, that the appointment of the Arbitrator after the statutory period would not be binding.

Learned counsel for the Railways has invited the attention of the Court to the judgement of the Apex Court in the case of **the Government of Haryana PWD Haryana (B and R) Branch Versus M/s G.F. Toll Road Pvt. Ltd. & Ors.** (Civil Appeal No.27/2019 arising out of S.L.P. (C) No.20201 of 2018) decided on 3rd of January, 2019. The ratio of the said judgement is that a former employee can also be continued as an Arbitrator, yet while



proceeding to dispose of the matter, the Apex Court went on to appoint a Retired Supreme court Judge to arbitrate the said proceeding. The same, therefore, does not in any way impede the powers of this Court under Section 11(6) of the 1996 Act to appoint an Arbitrator.

Having perused the affidavits exchanged between the parties and having perused the arbitration clause 64 and other provisions in relation thereto, I hereby appoint Hon'ble Mr. Justice Dharnidhar Jha (Retired) as the sole Arbitrator to enter upon this dispute and resolve the same at the earliest for which the parties are directed to communicate with the said Arbitrator for fixing a date for its first sitting in the month of June, 2019 whereafter the Arbitrator shall proceed in accordance with law.

The said appointment be communicated by the Registrar General and the requisites be sent accordingly forthwith.

(Amreshwar Pratap Sahi, CJ)

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