

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.32 of 2019

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M/S Natraj Engineering Pvt. Limited, a Company Registered under the Companies Act, 1956 having its Registered Office at 146, Patliputra Colony, Patna-800013, through its Director, Amar Kumar Prasad Sinha, aged about 65 year (Male), Son of Late Ram Kishore Prasad Sinha, Resident of 146, Patliputra Colony, P.S. Patliputra, Patna-800013. Petitioner/s

Versus

East Central Railway, Hajipur through its General Manager (Engg.) having its Head Office at Hajipur, Vaishali, Bihar. Respondent/s

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with

REQUEST CASE No. 33 of 2019

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M/S Natraj Engineering Pvt. Limited A Company Registered under the Companies Act, 1956- having its Registered office at 146, Patliputra Colony, Patna-800013 through its Director, Amar Kumar Prasad Sinha, Aged about 65 Years, Son of Late Ram Kishore Prasad Sinha, (Male) resident of 146, Patliputra Colony, Patna 800013. Petitioner/s

Versus

East Central Railway, Hajipur through its General Manager (Engg.) having its Head office at Hajipur, Vaishali, Bihar. Respondent/s

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with

REQUEST CASE No. 34 of 2019

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M/S Natraj Engineering Pvt. Limited A Company Registered under the Companies Act, 1956 - having its Registered office at 146, Patliputra Colony, Patna- 800013 through its Director, Amar Kumar Prasad Sinha, Aged about 65 (Male), Son of Late Ram Kishore Prasad Sinha, resident of 146, Patliputra Colony, P.S.- Patliputra, District- Patna 800013. Petitioner/s

Versus

East Central Railway, Hajipur through its General Manager (Engg.) having its Head office at Hajipur, Vaishali, Bihar. Respondent/s

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Appearance :

(In all the cases)

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate
		Mr. Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Kumar Manish, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

4 28-06-2019 Heard learned counsel for the applicant and the learned counsel for the Railways.

This application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a



substitute arbitrator in the proceedings that had been undertaken in the year 2016 and remains still unconcluded in the year 2019.

The contention raised is that this prolonged continuance of a proceedings before two arbitrators appointed by the respondents therefore entitles the petitioner to invoke the powers of this Court under Section 11(6) of the 1996 Act for appointment of a substitute arbitrator.

Learned counsel for the applicant has invited the attention of the Court to paragraphs 17 and 18 of the judgement of the Apex Court in the case of **Union of India & Others Versus Uttar Pradesh State Bridge Corporation Limited**, reported in **(2015) 2 SCC 52**.

Learned counsel submits that in the instant case a perusal of the manner in which the proceedings have been carried on for long for almost four years by two arbitrators appointed by the respondents is sufficient evidence to indicate that the matter is being lingered for no fault on the part of the applicant and was only on account of the proceedings being not conducted timely by the arbitrator.

Learned counsel for the Railways has, however, contended that this by itself cannot be a reason for appointment of a substitute arbitrator and has cited the judgement of this Court in the case of **M/s SRC Company Vs. M/s Rites Ltd. & Ors.**, reported in **2019 (1) BLJ 482** and has invited the attention of the Court to paragraph 13 of the said judgement to urge that there was no waiver



of any right either express or implied so as to invoke the authority of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

Having considered the submissions raised and having perused the aforesaid facts which are on record, I am of the opinion that on the present set of facts and the nature of proceedings where the same has been going on for almost four years, it would be imperative to invoke the arbitration clause and appoint a substitute arbitrator.

Consequently, Mr. Justice Dharnidhar Jha, a retired Judge of this High Court, is appointed as the sole Arbitrator to enter upon the dispute and render his award in terms of the provisions of the 1996 Act.

Let the information of this order along with papers be transmitted by the Registrar General to the sole Arbitrator for proceeding in the matter.

The application stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

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