

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.41 of 2016

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Sadanand Singh Construction Pvt. Ltd., Through Its Director Sadanand Singh
Son of Late Medni Singh, resident of Village- Dharhara, P.S. Dharhara,
District- Munger.

... .. Petitioner/s

Versus

1. The Managing Director, Through Its National Building Construction Corporation
2. The Dy. Director, National Building Construction Corporation, Maruya Tower, 4th floor, Maurya Tower, Maurya Lok, Patna
3. The Dy. General Manager National Building Construction Corporation, Maruya Tower, 3rd Floor, Maurya Lok, Patna
4. The Executive Engineer National Building Construction Corporation, Lakhisarai presently camp office at Sheikhpura.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Uday Prasad Singh, Adv.

For the Respondent/s : Mr. Satish Kumar Sinha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 05-06-2020

Heard learned counsel for the parties.

Petitioner has filed instant application seeking
appointment of an Arbitrator in accordance with the provisions of
Section 11 (4) of the Arbitration and Conciliation Act, 1996.

According to the petitioner, certain works were
executed in terms of agreement dated 16th January, 2006 entered
into between the petitioner, namely Sadanand Singh Const. Pvt.
Ltd. P.O. Dharahra, Distt. Munger, Bihar and the respondent
namely, National Building Construction Corporation Limited,



disputes having arisen inter se the parties with regard to payments, petitioner approached this Court by way of CWJC No.10983 of 2009 and CWJC No.14104 of 2014 titled as Sadanand Singh Construction Pvt. Ltd Vrs. The National Building Construction Corporation Ltd., wherein certain directions were issued by the Court for redressal of the petitioner's grievance.

It is alleged that despite the petitioner having resorted to the mechanism provided under the agreement, for redressal of the dispute, the respondents have failed to take action and as such, is left with no option but to file the instant petition under Section 11 (4) of the Arbitration and Conciliation Act, 1996

The sole issue which arises for consideration in the present petition is as to whether the agreement, in question, contains a clause whereby the parties have bound themselves for resolution of their dispute by way of arbitration or not.

For ready reference, two clauses of the agreement are re-produced as under:

24. Dispute Redressal System

If any dispute or difference of any kind whatsoever shall arise in connection with or arising out of this Contract or the execution of works or maintenance of the works thereunder, whether before its commencement or during the progress of work or after the termination,



abandonment or breach of the contract, it shall be referred to Empowered Standing Committee which will consist of :

- i) One official member, Chairman of the Empowered Standing Committee, not below the rank of Addl. Secretary to the State Government.
- ii) One official member not below the rank of General Manager, NBCC Ltd.
- iii) One non-official member who will be technical expert of Dy. General level selected by the Contractor from a panel of three persons given to him by the Employer.

Such decision in respect of every matter, so referred shall, subject to review as hereinafter provided, be final and bidding upon the contractor. In case, the works is already in progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending receipts of the decision of the competent authority as aforesaid with all the diligence.

24.2 The contractor and the employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the contractor and the employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of ninety days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

24.3 The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to five percent of the Initial Contract Price. The Contractor can accept and receive payment after signing as “in full



and final settlement of all claims”. If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of five percent of the Initial contract Price, he will be free to approach the courts applicable under the law.

25. Arbitration

25.1 In view of the provisions of the clause 24 of Dispute Redressal System, it is the condition of the contract that there will be no arbitration for the settlement of any dispute between the parties.”

Noticeably, parties have agreed to provide a dispute redressal mechanism in terms of Clause 24 of the agreement and in view thereof, they have agreed that there will be no arbitration for settlement of any dispute between the parties, which term is so provided under Clause 25 of the agreement.

It is settled principle of Law that scope of this Court to appoint an Arbitrator, be it under Section 11 of the Act, now stands settled by the Constitution Bench of the Apex Court in **SBP and Company Vrs. Patel Engineering Ltd. and Anr. (2005) 8 SCC 618** and in **Uttarakhand Purv Sainik Kalyan Nigam Limited Versus Northern Coal Field Limited, (2020) 2 SC 455**.

Necessarily, this Court is required to examine the existence of the arbitration agreement, which in the instant case



there is none. Simply because parties have failed to adhere to the terms of the Dispute Redressal system envisaged under the agreement, itself would not confer jurisdiction for such settlement by way of an arbitration, more so when in the instant case, the term of the agreement is couched in the negative, making settlement of dispute through the process of arbitration not to have been agreed.

As such, this Court finds no merit in the present petition, which is accordingly dismissed, leaving it open to the petition to take such recourse to such remedies as are otherwise available in accordance with law.

Needless to add, the period for which the petitioner has been pursuing the remedy before this Court shall be excluded for the purposes of limitation.

(Sanjay Karol, CJ)

sujit/-

AFR/NAFR	NAFR
CAV DATE	N/A
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