

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.122 of 2019

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M/s SGS Infotech Pvt. Ltd. through its authorised signatory Dr. Sushil Kumar Shukla having office and place of business at 407, Uday Vihar Phase IV Gurgaon Haryana 122015.

... .. Petitioner/s

Versus

1. The State of Bihar Urban Development Agency BUDA through its Managing Director, Vikas Bhawan New Secretariat, Patna 800015.
2. The Principal Secretary Government of Bihar Urban Development Department, Vikas Bhawan Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Singh, Advocate
For the Respondent/s : Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 01-06-2020

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This application has been filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) for appointment of a sole arbitrator for resolution of contractual dispute arising out of breach of contract on the part of respondent no.1 (The State of Bihar Urban Development Agency (BUDA) through its Managing Director, Vikas Bhawan New Secretariat, Patna-800015) being contract agreement for the assigned (work) of “Implementation geographical information system (GIS) for Patna and Bodhgaya under JNNURM contract No.UD & HD/BUDA/UD &



HD/MC/2009-10 Building Plan Approval/67.

3. On 11th of November, 2010, petitioner, namely, M/S SGS INFOTECH Pvt. Ltd., entered into an agreement with the respondent–Bihar Urban Development Agency (**BUDA**), for execution of certain public works. Certain disputes having arisen *inter se* the parties, in relation to the execution of the works under the said agreement, the petitioner herein, took recourse to remedies under the provisions of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008, vide Reference Case No.195/2015 titled as M/S SGS Infotech Pvt. Ltd. Vs. The State of Bihar & Ors.

4. BUDA refuted the claims but did not dispute the execution of the agreement in question.

5. Before such proceedings could be adjudicated, the Hon'ble Apex Court in ***State of Bihar & Ors. V. M/s Brahmaputra Infrastructure Limited, (2018) 17 SCC 444***, held the proceedings initiated before the Tribunal, like the ones initiated by the petitioner herein, to be not maintainable, in view of the parties agreeing to resort to the provisions of the Arbitration & Conciliation Act, 1996, to which the instant parties had agreed to resort to, for resolution of their disputes in terms of the agreement. As such, on 30th of July, 2019, the



petitioner herein withdrew the Reference Case No.195/1995 in terms of the following order: -

“30.07.2019. The learned counsel, Mr. N.K. Singh appearing on behalf of the petitioner submitted that he may be permitted to withdraw this reference case in view of the order of Hon’ble Supreme Court reported in AIR 2018 S.C. 2640 State of Bihar vs. Brahmaputra Infrastructure Pvt. Ltd. and the order passed by the Hon’ble High Court dated 13.05.2019 in Civil Revision No.20 of 2019 and 21 of 2019 for the purpose of availing other remedy. The learned counsel, Mr. Shambhu Nath for the respondent has got no objection.

In view of the submission of the learned counsel for the petitioner, the petitioner is permitted to withdraw this reference case as submitted by him.

Thus, this reference case is dismissed as withdrawn.”

6. Thereafter petitioner filed the instant petition on 22nd of October, 2019. The matter was listed before the Court on 05.02.2020 as also on 26.02.2020, when time was granted to BUDA to file its response, which has yet not been so done.

7. Be that as it may, the factum of execution of the agreement is not in dispute. Dispute in terms thereof has arisen. Equally, it cannot be disputed that the agreement contained an Arbitration Clause 9 providing mechanism for settlement of dispute, which reads as under: -

Clause 9:- Settlement of Dispute.



“9.1 Amicable settlement- The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this contracts or the interpretation thereof.

9.2;- Dispute settlement :- All disputes between the parties as to matters arising pursuant to this contract, which cannot be settled amicably within thirty (30) days after receipt by one party of the other party request for such amicable settlement, may be submitted by either party for settlement. If the dispute(s) is not resolved amicably then it shall be referred to arbitration and shall be dealt with as per provisions of the Arbitration & Conciliation Act, 1996.”

8. With the petitioner, having lodged the claim and initiated proceedings before the Tribunal, his intent of having the matter amicably resolved stood expressed, but as it appears, the respondent authority refuted the claims, hence, the present petition.

9. Consequently, this Court is left with no option but to appoint an Arbitrator.

10. Mr. Rabindra Kumar Priyadarshi, learned counsel for the respondents raises preliminary issue of delay and laches and that prior to filing of the instant petition, petitioner, ought to have first approached the authority seeking appointment of an Arbitrator.

11. On both the counts, this Court does not find



favour with the submissions made on behalf of the respondents.

12. Petitioner had served notice dated 26th of October, 2015, calling upon the respondent authority to settle the claims, prior to the invocation of his rights both under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 and the Arbitration & Conciliation Act, 1996. The authority refuted the claims and did not appoint the Arbitrator, leaving the petitioner no option but to approach the Tribunal in accordance with Law as prevalent at that point in time.

13. It is a matter of record that the proceeding initiated in the year 2015 continued till 2019 and with the decision rendered by the Hon'ble Apex Court in *State of Bihar* (supra), petitioner was left with no option but to withdraw the same, which was so done on 30.07.2019 and immediately thereafter, the instant petition filed on 22nd of October, 2019. Hence, there is no question of delay or laches on the part of the petitioner in pursuing the remedies in accordance with law.

14. Even in its notice dated 26th of October, 2015, it stands recorded that allegedly, respondents had not complied with the conditions of the contract, despite repeated reminders and the last one made in October, 2015. Well, this Court may not be misunderstood to have adjudicated the rights of the



parties about non-fulfilment of contractual obligation, but while considering the plea of delay and laches, necessarily it needs to be noticed.

15. As such the present petition filed under Section 11(6) of the Act needs to be allowed.

16. Accordingly, Hon'ble Justice Smt. Anjana Mishra, a retired Judge of the Patna High Court of the Judicature at Patna, is appointed as an Arbitrator to adjudicate the dispute inter se the parties.

17. All disputes arising out of Agreement dated 11th November, 2010 entered between the parties is referred to the Arbitrator for arbitration.

18. On the name of the learned Arbitrator, there is no objection by either of the learned counsel for the parties.

19. Parties undertake to appear before the learned Arbitrator within one week after the lockdown period of current Pandemic Covid-19 is over. Parties also undertake to fully co-operate and agree to request the learned Arbitrator to complete the proceedings at the earliest, which request, this Court, hope, would be considered favourably.

20. Learned Arbitrator shall be entitled to fees as per law.



21. Learned Registrar General shall ensure that a copy of this order along with the necessary record, is made available to the learned Arbitrator positively through an electronic mode on or before 6th of June, 2020.

22. Parties shall file their statement of claims before the learned Arbitrator on such date of hearing, which the learned Arbitrator may fix, as may be mutually convenient to all concerned.

23. In fact even during the lockdown period, subject to the convenience, arbitral proceeding can commence through the use of video conferencing/other electronic mode.

24. Learned counsel for the parties also undertake to apprise the learned Arbitrator of the passing of the order. This, they shall positively do so within next two working days.

25. The Request Petition stands disposed of in the above terms.

26. No order as to costs.

(Sanjay Karol, CJ)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.06.2020
Transmission Date	NA

