

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.166 of 2019

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Prop. Shiv Kumar Sah, S/o Umesh Sah Proprietor of M/s Umesh Rice Mill,
R/o Sahuriya (S) Police Station- Saur Bazaar, District- Saharsa.

... .. Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Limited Khadya Bhawan, Daroga Prasad Path, R. Block, Road No.2, Patna- 800001. Through its Managing Director.
2. The Managing Director Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Path, R. Block, Road No. 2, Patna- 800001, Patna.
3. The District Manager Bihar State Food and Civil Supplies Corporation Limited, Saharsa.
4. The District Magistrate Saharsa.
5. The District Certificate Officer, Officer Cum Senior Deputy Collector, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar, Adv. Mr. Dinkar Kumar, Adv.
For the Respondent/s	:	Mr.Shailendra Kumar Singh, Adv. Mr. Ranjan Kumar Srivastava, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 17-07-2020

This application has been moved seeking appointment of an Arbitrator invoking the powers of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

There is no dispute about-(a) the legality, validity and binding effect of the agreement dated 01.04.2013 entered into between the parties to the lis; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arising



therefrom.

Learned counsel for the petitioner states that the petitioner's case is squarely covered vide ratio laid down by this Court in judgment dated 03.07.2020 passed in Request Case No. 146 of 2019, titled as Sanjay Kumar Versus The Managing Director, Bihar State Food and Civil Supplies Corporation Limited and another and other connected matters, save and except that today they have no instructions to make any such statement which stands recorded in paragraph 72 of the judgment which reads as under:-

“72. This Court unsuccessfully tried to have the matter reconciled without adopting any lengthy adjudicatory process in terms of order dated 16.06.2020 passed in the present petitions which reads as under:

“9. 16.06.2020 Sri Anjani Kumar, learned Senior Advocate appearing for the Bihar State Food and Civil Supply Corporation has placed on record a chart indicating the immovable properties and the bank guarantee(s) furnished by each one of Parties/Applicants/Petitioners and the deficiency in meeting the amounts in terms of the agreement/alleged defalcated amount. Petitioner(s) seriously dispute correctness of the particulars furnished therein. Without prejudice to the respective rights and contentions of the parties, this Court had impressed upon each one of the petitioners to have the matter amicably resolved by at least sitting with Sri Anjani Kumar, learned Senior



Advocate appearing for the Corporation, which suggestion is not acceptable to any one of the petitioners, on the ground of conflict of interest.

This Court does not see any logic or reason in advancing such a plea, for the endeavour was only to put an end to the entire civil litigation, be it the certificate proceedings or the arbitral proceedings at the earliest and the learned Senior Counsel is a man of standing, apart from being extremely fair. The whole idea is to have the accounts and the amount reconciled and the matter resolved without taking recourse to lengthy adjudicatory process. Well, it is for the petitioner(s) to choose such a course and this Court would not impress upon them any further. Learned counsel for the petitioner(s) state that if the Arbitrator (s) were to be appointed, their clients would be ready and willing to pay the entire fee of the Arbitrator (s), as also, incur all the expenses of arbitral proceedings and that such proceedings shall not be allowed to be lapsed only on such a count. Also, before the commencement of the arbitral proceedings, petitioner(s) shall abide by all the orders passed by Hon'ble the Supreme Court.

Statement taken on record.

Post on 22nd June, 2020.”

The statement deals with two aspects- (i) furnishing of the Bank Guarantee in terms of the order passed by the Hon'ble Apex Court; (ii) fee of the arbitral proceedings.

On the first aspect that there cannot be any



difficulty. Bank Guarantee has to be furnished in terms of the orders passed by the Hon'ble Apex Court referred to in Sanjay Kumar (supra).

Insofar as the second issue is concerned, even in the absence of any statement there cannot be any difficulty, for the issue of payment of fees to be paid to the learned Arbitrator is discussed in paragraph-75 of the judgment which is reproduced as under:-

“75. The learned Arbitrator(s) shall hold the proceedings in the State of Bihar unless parties otherwise agree. Arbitrator(s) fee would be as per Fourth Schedule of the Arbitration Act and paid by the petitioner(s) as per their statement, which of course, shall be subject to further direction(s) issued in the final award. Insofar as furnishing of bank guarantee is concerned, the issue is left open to be examined by the learned Arbitrator(s) who shall ensure compliance of the orders passed by the Hon'ble Supreme Court as also interim order dated 16.06.2020 passed in these petition(s).”

As such, Hon'ble Smt. Justice Nilu Agrawal, Former Judge, Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement dated 01.04.2013 entered between the parties.

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



Parties undertake to appear before the learned Arbitrator within two weeks through the mode of Video Conferencing and as permissible during the lockdown period of current Pandemic Covid-19.

Parties also undertake to fully cooperate and agree to request the learned Arbitrator to complete the proceedings at the earliest, which request, this Court, trusts would be favorably considered, more so in view of the directions issued by Hon'ble the Supreme Court.

Learned Registrar General shall ensure that a copy of this order is made available to the learned Arbitrator, positively through an electronic mode within a period of two weeks.

Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

In fact, even during the lockdown period, subject to the convenience, arbitral proceeding can commence and conclude using facility of video conferencing/other electronic mode.

Learned counsel for the parties also undertake to apprise the learned Arbitrator of the passing of the order. This,



they shall positively do so through an electronic mode within a period of two weeks.

It is clarified that petitioner shall pay the fee of the learned Arbitrator which, of course, shall be subject to further orders passed in the Award. Also, he shall be bound by the directions issued in the judgment referred to supra. It is directed that during the time of current lockdown arising out of Pandemic Covid-19, no coercive action shall be taken against the petitioner till 15th August, 2020. Subsequent thereto, liberty is reserved to the parties to approach the learned Arbitrator for grant of interim relief. Failure on the part of the parties would entail automatic vacation of interim order of protection.

The Request Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2020
Transmission Date	

