

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.210 of 2019

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M/s Enarch Consultants Private Limited, a Company registered under the Companies Act having its Office situated at B-66, Sector-63, Noida - 201301 (U.P.) through its Managing Director Rahul Gupta, son of Late Shri Jai Prakash Gupta, resident of House No. E-56, Sector- 41, P.S.- Sector- 39, Noida, District- Gautam Budh Nagar, Pin Code- 201301 (U.P.)

... .. Petitioner/s

Versus

1. The Bihar State Housing Board having its Office at 6, Sardar Patel marg, Patna- 800015 through its Managing Director.
2. The Managing Director, Bihar State Housing Board having its Office 6, Sardar Patel Marg, Patna- 800015.
3. The Secretary, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.
4. The Chief Engineer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Pawan Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 19-02-2020

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

The present petition has been filed for appointment of an independent Arbitrator in terms of Section 11(6) of the Arbitration & Conciliation Act, 1996, for the dispute has arisen



between the petitioner and the respondent-Bihar State Housing Board and on the representation of the petitioner the respondents have failed to refer the dispute to an Arbitrator in terms of Clause-11 of the Agreement dated 01.12.2011 entered into between the parties.

Vide agreement dated 1st of December, 2011 (Annexure-5) the petitioner entered into an agreement with the respondents for execution of work, inter alia, Site Evaluation and analysis; Architectural work and site development; Structural engineering work; Sanitary, plumbing, drainage, water supply and sewerage work; Electrical work; Fire-fighting system/HVAC/specialized services as per requirement; Landscape work including design of open spaces, horticulture etc.; and any other related works specifically entrusted by the BSHB.

The agreement contains an arbitration clause, which reads as under:-

“11.0 ARBITRATION

In the event of any question, dispute and or difference whatsoever arising under the agreement or in connection therewith including any question relating to existence, meaning and interpretation of this agreement any alleged breach thereof, the same shall be settled as far as possible by mutual discussions and



consultation between Consultant-Architect and BSHB with reference to and in context of the agreement failing which the same will be referred to the sole Arbitration of any arbitrator appointed by the Managing Director, BSHB, whose decision shall be final and binding on both the parties. Subject to as aforesaid, the Arbitration and Conciliation Act, 1996 and rules there under and any statutory modifications thereof for the time being in force shall apply to the arbitrator proceedings under these paras. It is clearly agreed that in every case where any appointee arbitrator refuses or vacates his office or neglect or refuses to act or become incapable of acting or dies, the vacancy shall be supplied by the Managing Director, BSHB as aforesaid.”

It is not in dispute that dispute in relation to the execution of the scope of work, as prescribed under the agreement, arose inter se the parties, in relation to which correspondence was exchanged. It is only, when the petitioner, allegedly breached the terms of the agreement, that the respondents decided to terminate the contract. It is only as a result of the alleged non-performance of the contract and non-fulfilment of its terms and conditions, that the respondents refused to pay the amount so claimed by him for execution of the work. It is also not in dispute that the respondents got the



work evaluated and released certain amount for the work already executed, but then it is the petitioner's contention that such evaluation is incorrect and in any case, petitioner is entitled to the full amount under the agreement. As such, a dispute arose between the parties.

Since the claims are monetary in nature, petitioner approached this Court by way of C.W.J.C. No. 9212 of 2017, titled as M/s Enarch Consultants Private Limited Vs. The Bihar State Housing Board & Ors., which was disposed of vide judgment dated 23.02.2018. The said judgment, in toto, is being reproduced herein under:-

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

2. The present writ petition has been taken up out of turn on the request of learned counsel for the petitioner for disposal of the same with a direction to the respondents to pay the admitted dues of the petitioner.

3. The present writ petition has been filed for a direction to the respondent-authorities to pay the outstanding amount of Rs. 1,56,13,539/- for the work executed by the petitioner together with interest thereon.

4. Learned counsel for the petitioner submits that despite having executed the contract work, an amount of Rs. 20,00,000/- has been paid,



leaving an amount of Rs. 1,56,13,539/- outstanding for payment.

5. Learned counsel for the respondents appears and has been heard.

6. Having regard to the nature of the grievances of the petitioner, this writ petition is disposed of, granting liberty to the petitioner to approach the Managing Director, Bihar State Housing Board, Patna (Respondent No. 2) with a fresh representation for redressal of its grievances. If any such representation is filed within a period of two weeks from today, the same shall be considered and disposed of, ensuring payment to the extent found due to the petitioner, within a period of six weeks from the date of receiving the petitioner's representation. Any delay in payment of the admitted amount beyond the stipulated period as stated above, shall entitle the petitioner to receive payment together with simple interest at the rate of 6% per annum on the admitted dues calculated from the date when the amount became due till the date of its actual payment. In case the petitioner's claim is found inadmissible, whether in whole or in part, the petitioner's representation shall be disposed of by a speaking order in that regard.

7. It is made clear that this Court is not expressing any opinion on the merits of the claim of the petitioner."

Petitioner's claim, filed pursuant thereto, stands



rejected vide communication dated 19.09.2018 (Annexure-R/4).

The existence of dispute is evident from the record, which is in relation to the agreement (supra). There is an arbitration clause, and such dispute can be adjudicated in terms thereof, about which there is no dispute.

As such, with the consent of the parties, Hon'ble Mr. Justice Dharnidhar Jha, a retired Judge of the Patna High Court, is appointed as an Arbitrator to adjudicate the dispute inter se the parties.

Parties undertake to appear before the learned Arbitrator on 30.04.2020 and apprise him of passing of this order. They also undertake to fully cooperate and request the learned Arbitrator to complete the proceedings at the earliest, which request, this Court, hope, would be considered appropriately.

Let Registrar General ensure that a copy of this order is made available to the learned Arbitrator by 20th April, 2020.

The parties shall file their statement of claims before the learned Arbitrator on the next date of hearing.

Needless to add, that arbitral proceedings shall be held in consonance with the settled principles of law and the provisions of the Arbitration and Conciliation Act.



Learned Arbitrator shall be entitled to fee as per
schedule.

The petition stands disposed off in the aforesaid
terms.

(Sanjay Karol, CJ)

P.K.P./-Utkarsh

AFR/NAFR	
CAV DATE	
Uploading Date	09.04.2020
Transmission Date	

