

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.3 of 2021

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M/s SIPL Infracon, Krishna Nagar, Bela, Muzaffarpur, Pin-843116, a proprietorship firm through its Proprietor-Prashant Saurabh, Male, aged about 47 years, son of Shree Chandeshwar Prasad Sharma, resident of Mohalla-Krishna Nagar, Opposite of Nayan Deep Eye Hospital, Bela, Police Station-Bela, Muzaffarpur, Pin-843116.

... .. Petitioner/s

Versus

1. M/s CABCON India Private Limited, First Floor, The Terminus Building, BG-12, Action Area-1B, New Town, Kolkata-700156.
2. The Managing Director, CABCON India Private Limited, First Floor, The Terminus Building, BG-12, Action Area-1B, New Town, Kolkata-700156.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Navendu Kumar, Advocate Mr. Chrayesh Bharadwaj, Advocate
For the Respondent/s	:	Mr. Sanjay Singh Thakur, Advocate Mr. Parijat Saurav, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 17-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“ for appointment of arbitrator in terms of section 11(6) of the arbitration and conciliation act 1996 under the circumstances that the respondents have failed to adhere to the terms and condition of the agreements contained in work order number – CIPL/DDUGJY-SBPDCL/PSS/CIVIL/17-18/49 dated 02.06.2017, WO/BHP/DDU/17-18/022 dated 03.12.2017 and also some work orders for which a formal contract was not executed; and further failed to respond to the request for arbitration by an independent arbitrator, the notice whereof was given through speed post on 01.12.2020.”



Having heard learned counsel for the parties, this Court is inclined to allow the petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

Undisputedly, as is evident from the objection petition filed by the respondents, the parties entered into a written agreement dated 2nd June, 2017 in relation to execution of certain public works.

Orally, it is argued that copy of the agreement containing the arbitration clause was not supplied to the petitioner. This Court does not find any favour with the submissions so made, moreso, in view of the objection petition filed by the respondents wherein they themselves admit the existence of the arbitration clause contained in the agreement with the sole objection in relation to the jurisdiction of this Court to entertain the petition.

Inviting attention to the clauses 37 and 38 of the agreement (Work Order dated 02.06.2017), learned counsel for the respondents raises the preliminary jurisdictional issue of this Court to entertain the present petition.

Clauses 37 and 38 read as under:

“37) ARBITRATION

All disputes or differences and/or claims between the Parties hereto arising out of



and/or in connection with and/or in consequence of and/or relating to this contract shall be referred to the adjudication of two arbitrators, one to be nominated by each party. And these two arbitrators so appointed shall mutually appoint the third arbitrators (who shall be presiding arbitrator. In the event the two arbitrators fail to appoint the third arbitrator. Such arbitrator shall be appointed in accordance with the provisions of the Arbitration & Conciliation Act, 1996 (Arbitration Act). The arbitration proceedings shall be conducted in accordance with the provisions the Arbitration Act 1996 and or as amended from time to time. Venue of such Arbitration shall be in the city of Kolkata. The language shall be English. The award shall be binding on parties and the cost of arbitration to be shared equally by the parties.”

“38) Jurisdiction

The Courts at Kolkata alone and no other courts shall have jurisdiction to entertain, try and or determine the existence validity or otherwise of the contract including the arbitration agreement and all proceedings arising thereunder and the award if any made thereunder and in case the arbitration proceedings becomes infructuous, the courts at Kolkata alone and no other court shall have jurisdiction to receive, try and determine any claim or disputes arising under this contract and/or relating to the same in any way whatsoever.”



Undoubtedly, clause 38 confines the jurisdiction only with respect to the Court at Kolkata, but the position is not as simple as is so projected by the respondents, in view of a subsequent communication dated 13th June, 2017 addressed by the petitioner to the respondents which reads as under:

“To 13.06.2017
The Project Manager
Cabcon India Pvt. Ltd
Aara, Bhojpur, Bihar

Sub: Regarding Clause no.37 and 38 of work order
issued by you dated 11.06.2017

Dear Sir

I Prashant Saurabh, Prop: SIPL Infracon is working with your company as a sub-contractor. I have started the work in Katariya PSS in 17th April 2017. I am about to finish the boundary wall work of pss. Now at 11.06.2017 my work order comes to me through mail. I read carefully this work order and found some clause which is not acceptable to me. I am not agree to accept the clause no.37 and 38 of this work order. My office is in Muzaffarpur (Bihar), my work place is Bhojpur (Bihar), and if I have any problems with you in future I will have to go in Kolkata High Court Jurisdiction, that is not acceptable.

So Please finalize my till date work and settle my account because I am not in a position to continue the work with clause no.37 and 38.

If you want to continue with me in this project, please release me this clause no.37 and 38. Any dispute between your company and me will dissolve only in the jurisdiction of Patna High Court. And this will apply in all upcoming work order if I continue with your company.

Please answer me immediately.



Thanks and Regards
Sd/ Prashant Saurbh
Proprietorship Firm
M/s SIPL Infracon”

In fact, the authorized officer of the respondent, in writing, requested the petitioner to continue with the work, as per his opinion, there would be no dispute in future. Also, this communication of the petitioner was forwarded to the Head Office at Kolkota. It is with this assurance, as is so averred by the petitioner that with effect from 13th June, 2017, he not only continued to execute the work in terms of the work order, but also the additional work so allotted subsequently by the respondents in the year 2018-19.

The petitioner has averred all this in paragraphs 4 and 5 of the petition to which there is no denial by the respondents.

Undisputedly, the work order was placed upon the petitioner within the State of Bihar; the work was to be and was executed in Bihar; the bills were raised from Bihar; the payments were also made in Bihar; the respondent had posted its supervisor in Bihar who was supervising the work here. Most crucially, the work order containing clauses 37 and 38 is not signed by the petitioner and the moment he received the same,



he immediately protested against the inclusion of clauses 37 and 38 conferring the jurisdictional issue to the Courts at Kolkata, to which not only an assurance was meted out by the respondent's authorized representative, but the communication forwarded to the Head Office at Kolkata to which the respondents did not object in the negative. Thus, the parties, on the jurisdictional issue contained in the work order were *ad idem* with its exclusion.

In view of the aforesaid bundle of facts, the respondents' objection vis-à-vis jurisdictional issue of this Court with respect to present petition only merits rejection, more so, in view of the law laid down by this Court in **Bharat Aluminum Company v. Kaiser Aluminium Technical Services INC. (2012) 9 SCC 552; Swastik Gases Private Limited v. Indian Oil Corporation Limited, (2013) 9 SCC 32; Exl Careers v. Frankfinn Aviation Services (P) Ltd. (2020) 12 SCC 667.**

It has come on record that the petitioner has been making request seeking appointment of the Arbitrator. Clause 37 was invoked. Disputes are in existence. They are civil in nature and in relation to the agreement dated 2nd June, 2017. In view of the same, petition needs to be allowed.

As such, as jointly prayed for, Hon'ble Mr.



Justice Mr. Rakesh Kumar, a former Judge of this Court is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement dated 02.06.2017 entered into between the parties to the *lis*.

All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

Learned Arbitrator shall be entitled to fee as per the Schedule of the Act.

Since the dispute arises out of an agreement of the year 2017, the hearing be expedited.

Parties undertake to fully cooperate and not take any unnecessary adjournment.

It is expected of the learned Arbitrator to decide the issues expeditiously.

Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator. In fact, they volunteered to appear before him, through digital mode on 30th November, 2021 and apprise him of the passing of the order.

Parties shall file their statement of claims before



the learned Arbitrator on such date of hearing which he may
fix, as per mutual convenience.

The Request Petition stands disposed of in the
above terms.

Interlocutory Application(s), if any, shall stand
disposed of.

(Sanjay Karol, CJ)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	20.11.2021
Transmission Date	

