

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.22 of 2021

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Medicine Palace a company Registered under the Companies Act, 2013 having its registered office at West Boring Canal Road, Patna 800001, Bihar - through its authorized representative and the Proprietor, Shri Anjani Kumar Singh, aged about 63 years, Male, S/o Ramchandra Prasad Singh, R/o 6/102, Indrapuri, P.S. Patliputra, Dist. Patna 800024, Bihar.

... .. Petitioner/s

Versus

1. The Central Warehousing Corporation through the Regional Manager, Maurya Lok Complex, Block A, 2nd Floor, Patna-800001.
2. The Warehouse Manager, Central Warehouse, Jail Road Hazaribagh, Jharkhand.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Senior Advocate
Mr. Vinay Mistri, Advocate
Mr. Sanket, Advocate
Mr. Vanketesh Kirti, Advocate

For the Respondent/s : Mr. Anjani Kumar, Senior Advocate
Mr. Alok Rahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 18-08-2021

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 terms and conditions governing contract for transport, unloading/loading of foodgrain and allied material at Central Warehouse at Hazaribagh dated 09.01.2018 (Annexure-1) entered into between the parties to the lis; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arisen therefrom and (d) the petitioner

having put the party to notice of its intent seeking arbitration under the agreement.

Learned counsel invites attention of this Court to clause [XIX] of the terms and conditions governing contract for transport, unloading/loading of foodgrain and allied material at Central Warehouse at Hazaribagh dated 09.01.2018 (Annexure-1) entered into between the parties to the lis. On 29.06.2020, notice invoking the arbitration clause with respect to the disputes arisen out of the said agreement was also issued to Respondent-Authority. As per the averments made in the petition, despite the same, this process was not initiated.

Clause [XIX] of the terms and conditions governing contract for transport, unloading/loading of foodgrain and allied material at Central Warehouse at Hazaribagh dated 09.01.2018 reads as under:

“All disputes and differences arising out of or in any way touching or concerning this agreement whatsoever shall be referred to the sole arbitration of any person appointed by the Managing Director, Central Warehousing Corporation, New Delhi. It is a term of this contract that in the event of such Arbitrator to whom the matter is originally referred being transferred, or vacating his office or being unable to act for any reason, the Central Warehousing Corporation at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of this contract. Such person shall be entitled to proceed with the reference from the stage at which was left by his predecessor. It is also a term of his contract that no person other than a person appointed by the Managing Director,

Central Warehousing Corporation, New Delhi as aforesaid should act as Arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all. The Arbitrator shall give reasons for his award.”

Vide communication dated 29th June, 2020 (page-165) petitioner had invoked the arbitration clause. Similar request was made vide communication dated 23rd January, 2021 (Page-169). Both these letters were addressed to the Regional Manager of the Corporation.

Sri Anjani Kumar, learned Senior Counsel appearing for the respondents argues that as per the arbitration clause the communication was to be addressed to the Managing Director.

The contention needs to be rejected on three counts- (i) arbitration clause does not stipulate a condition whereby communication seeking invocation of the arbitration clause was to be addressed to the Managing Director; (ii) acting on such communication, the respondents themselves asked the petitioner to attend the conciliation proceedings and (iii) petitioner's request for appointment of the Arbitrator was never turned down, in fact, it was forwarded through the Regional Manager to the Managing Director, who belatedly appointed the Arbitrator on 29th June, 2021 (page 209).

Noticeably, between 29th June, 2020 and 29th June, 2021, the respondents slept over the matter for a period of one year in neither entertaining nor deciding the issue. Also no response was issued to the communication dated 29th January, 2021. The Arbitrator was not

appointed within a stipulated period of time, forcing the petitioner to file the instant petition on 26.02.2021. In this view of the matter, respondents' action for appointing arbitrator vide communication dated 29th June, 2021 (page 209) would be of no consequence and legally unsustainable.

For the aforesaid reason, the opposition to the petition is wholly unsustainable and as such dispute is required to be referred to the arbitration of Arbitrator to be appointed by this Court.

Hence, this Court is inclined to allow the petition by appointing an arbitrator.

As such, Hon'ble Mr. Justice Dinesh Kumar Singh, Retired Judge of the Patna High Court, Patna is appointed as learned Arbitrator to adjudicate all disputes arising out of the agreement dated 09.01.2018 (Annexure-1) 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 fees as per Schedule IV of the Arbitration Act.

Since the dispute arises out of an agreement of the year 2018, the hearing be expedited.

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

The proceedings, during the time of current Pandemic-Covid-19 shall be conducted through digital mode, unless the parties

otherwise mutually agree to meet in person i.e. physical mode.

It is expected of the learned Arbitrator to adjudicate the disputes 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 13th of September, 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.08.2021
Transmission Date	