

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.53 of 2020

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Hindustan Construction Company Ltd. a Company incorporated under the Companies Act, 1956, having its registered office at Hincan House, L.B.S. Marg, Vikhroli (West), Mumbai- 400 083, through its authorized representative Mr. Nilesh Vasant Mekel, son of Vasant Dasharath Mekel, aged about 44 years, Gender- Male, resident of Flat No. G- 2, Building No. C7, Mohan Puram CHS, Kansai Section, Jatale Hospital, Ambernath East, Thane- 421501, Maharashtra.

... .. Petitioner/s

Versus

1. Bihar Rajya Pul Nirman Nigam Limited a Company incorporated under the Indian Companies Act, 1956, having its registered office at 7, Sardar Patel Marg, Patna, Bihar- 800015, through the Managing Director.
2. The Managing Director, Bihar Rajya Pul Nirman Nigam Limited.
3. The Deputy Chief Engineer, South Bihar, Bihar Rajya Pul Nirman Nigam Limited.
4. The Engineer-in- Charge, Works Division- Gaya, Bihar Rajya Pul Nirman Nigam Limited.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate
		Ms. Aditi Hansaria, Advocate
For the Respondent/s	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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 agreement dated 04.03.2014 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 for the petitioner submits that disputes and differences have arisen under the contract between the parties dated 4th March, 2014 and as per Clause 25 of the Clauses of Contract, the petitioner initially filed its claims before the Engineer in-Charge on 17.05.2019 and thereafter, before the Deputy Chief Engineer on 15.10.2019. The petitioner also filed an Appeal before the Managing Director on 12.11.2019. However, no decision has been taken in the aforesaid claims/appeal filed by the petitioner. Accordingly, in terms of Clause 25 of Clauses of Contract, an Arbitrator is required to be appointed as the Managing Director of the Respondent has failed to decide the Appeal of the petitioner within time stipulated therein. As such, there is no legal impediment for this Court in entertaining the present petition and allowing the same.

The sole ground for resistance of the petition, as argued in the Court, is non-quantification of the claim. From the communication dated 10th January, 2020, whereby the petitioner, in exercise of its right, had named the Arbitrator, the claim stands quantified. At one place, the figure mentioned is Rs.8883.65 lakhs. Hence, the contention is misconceived.



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

As such, Hon'ble Mr. Justice Shivaji Pandey, Retired Judge of the Patna High Court, Patna is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement dated 04.03.2014 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 the Fourth Schedule of the Arbitration Act.

Since the dispute arises out of an agreement of the year 2014, 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	

