

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.43 of 2021

Uttar Pradesh Nirman Nigam Limited having its Zonal office at ET- 502, Twin Tower, Near Gandhi Maidan, Patna - 800001 through its Project Manager (Patna Zone) Mr. Sanjeev Singhal, aged about 58 years, (M), S/o Late Sh. Shyam Sunder Singhal and R/o C/o Sh. Madan Prasad, Flat No. 304, Ram Nath Apartment, IAS Colony, Kidwai Nagar, Patna - 800001, Bihar.

... .. Petitioner

Versus

Patna Smart City having its office at C/o Patna Municipal Corporation, Floor 2 Block- C, Maurya Lok Complex, Dakbunglow Road, Patna - 800001 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yashraj Bardhan, Advocate Mr. Suvir Sharma, Advocate Mr. Vishal Singh, Advocate
For the Respondent/s	:	Mr. Ranjeet Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 01-12-2021

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.

Parties to the *lis* are Public Sector Undertakings/instrumentalities of the State. The dispute resolution mechanism i.e. Article 24 reads as under:-

"24.1 Dispute resolution

24.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall in the first instance, be attempted to



be resolved amicably in accordance with the conciliation procedure set forth in Clause 24.2.

24.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

24.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon an officer of the Authority, not below the rank of Secretary to the Government or Chief Engineer, as the case may be, or such other person as the Parties may mutually agree upon (the "Conciliator") to conciliate and assist the Parties in arriving at an amicable settlement thereof. Failing conciliation by the Conciliator or without the intervention of the Conciliator, either, Party may require, such Dispute to be referred to the Secretary or Chief Engineer of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the (seven) business day period of the Dispute is not amicably settled within 15 (fifteen) business days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) business days of the notice in writing referred to in Clause 24.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 24.3.

24.3 Arbitration

24.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 24.2 shall be



finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 24.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution. New Delhi or Construction Industry Arbitration Council (CIAC), New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State, and the language of arbitration proceedings shall be English.

The Arbitration shall be in Institutional mode & would not be adhoc, in any case, and the online mode of dispute resolution may also be resorted to as per the latest notification of Ministry of Law & Justice, Government of India.

24.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

24.3.3 Wherever possible or required, On-line dispute resolution mechanism as prescribed by Ministry of Law vide their notification- <http://doj.gov.in/sites/default/files/List%20of%20firm%20with%30profile-17.1.pdf> with subsequent amendments if any, is to be resorted to, in place of the traditional in-situ arbitration procedures. The decision on which system of procedures is to be followed (viz traditional or on-line) would rest with the Contracting Parties at the time of signing the contract, who may if they so decide, permit the decision to be made by Third Arbitrator (appointed by the two nominated arbitrators).

24.3.4 The arbitral tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 24 shall be



final and binding on the Parties as from the date it is made and the Contractor and the Authority agree and undertake to carry out such Award without delay.

24.3.5 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

24.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

24.3.7 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

24.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 24.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed



accordingly.”

It is a matter of record that one such attempt was made to have the dispute amicably resolved, in relation to which minutes dated 16th of October, 2020 were drawn. Evidently, parties could not arrive at any settlement. Since no consensus could be arrived at, it was decided that another meeting would be held at a later date when all options would be evaluated and discussed for amicable resolution of the disputes. Petitioner, vide communication dated 18th of March, 2021 invoked the arbitration clause by suggesting the name of the Arbitrator. It is a matter of record that the said communication was not responded to.

Learned Advocate General states that since the parties are Public Sector Undertaking/Instrumentalities of the State, they must endeavour to have the dispute resolved through the process of conciliation, for which the respondents are ready to sit with an open mind.

Finding favour with such suggestion, the Court orders accordingly.

As such, the present petition is disposed of in the following terms:-

(a) Parties shall recommence the proceedings for



reconciliation and first such meeting shall take place in the office of the Managing Director of the respondent on 20th of December, 2021;

(b) With an open mind, the parties shall endeavour to have the dispute resolved, more so, in the light of Article 24 of the written agreement dated 18th of April, 2019;

(c) Such mechanism must positively be completed within a period of three months thereafter;

(d) Liberty reserved to the petitioner to approach the Court on the same and subsequent cause of action, should the need so arise subsequently.

(e) The Court has not expressed any opinion on the merits of the case. All issues are left open.

The instant petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

Ashwini/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	03.12.2021
Transmission Date	

