

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.9 of 2021

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M/s Pristine Magadh Infrastructure Pvt. Ltd., a Company incorporated under the Companies Act, 1956 having its registered Office at 3rd Floor Wing B, Commercial Plaza, Hotel Radisson, Mahipalpur, NH- 8, and New Delhi - 110037 through its Regional Head Rakesh Kumar, aged about 51 years (male), S/O Late Baikunth Narayan Singh, R/O North Mandiri, P.S. - Budha Colony, Dist. - Patna.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajpur, District- Vaishali- 844101.
2. Divisional Railway Manager, East Central Railway, Danapur, District- Patna - 801105.
3. Deputy Chief Engineer (G), East Central Railway, P.O Hajipur District- Vaishali - 844101
4. Senior Divisional Engineer (Co-ord), East Central Railway, Danapur District- Patna - 801105.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Alok Kumar Shahi, Advocate Mr.Arvind Kumar, Advocate
For the Respondent/s	:	Dr. K. N. Singh (ASG) Mr. Radhika Raman, CGC Mr. Devansh Shankar Singh, JC to ASG Mr. Sriram Krishna, JC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 20-04-2022

This application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed praying for appointment of an Arbitrator to adjudicate the dispute



between the parties.

Parties to the lis entered into a written agreement dated 01.10.2015 for execution of certain works. With the disputes emanating out of the agreement, the present petitioner invoked the arbitration clause seeking appointment of an arbitrator. The relevant clause dealing with the resolution of disputes through the process of arbitration reads as under:

“26.4 Arbitration

26.4.1 Any Dispute, which is not resolved amicably as provided in Articles 26.1, 26.2 and 26.3 shall be finally decided by reference to arbitration by a Board of Arbitrators, appointed pursuant to this Article 26.4. Such arbitration shall be held in accordance with the Rules of Arbitration as mentioned in the PH policy 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 venue of such arbitration shall be New Delhi or any other place as may be decided by the Arbitrator India and the language of the arbitration proceedings shall be English.

26.4.2 There shall be a Board of three arbitrators of whom each party shall select one and the third arbitrator shall be selected by the two arbitrators so selected, and in the event of a disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

26.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 26.4 shall be final and binding on the Parties as from the date it is made, and the Terminal Management Company and the Railway Administration agree and undertake to carry out such Award without delay.

26.4.4 The Terminal Management Company and the Railway Administration agree that an Award may be enforced against the Terminal Management Company and/or Railway Administration, as the case may be and their respective assets wherever



situated.

26.4.5 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.”

The respondent, of its own, appointed an arbitrator to adjudicate the disputes emanating out of the said agreement. The present petitioner not only protested the same by invoking the said clause, but also suggested certain names who could be appointed as arbitrators. Not finding favour with such suggestion, petitioner was left with no option but to file the instant petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking reference of disputes to duly constituted tribunal in terms of and under the provisions of the arbitration clause.

Initially, the present petition was registered on the ground that the tribunal already stands constituted. Noticeably, during the pendency of the instant petition, one of the members of the tribunal expired. On 19th of January, 2022, this Court had passed the following order:-

“The short issue which arises for consideration is as to whether the constitution of the arbitral Tribunal in terms of communication dated 10th of June, 2020 (Annexure- 11 Page No. 115) is in consonance with Clause 26.4 (Page



No. 88) of the agreement entered into between the parties or not.

Noticeably, the said clause does not bind the parties to be governed by the provisions of the GCC which the Railways is referring to and relying upon heavily. It is also not evident from the record as to whether the appointment is in terms of the PH Policy as referred to in Clause 26.4. Also, there is nothing on record to show that the parties had entered into any other agreement binding themselves to be governed under the provisions of GCC Clause.

Significantly, the respondents have not addressed this issue in any one of the affidavits. As such, as prayed for, indulgently, though reluctantly, another opportunity is afforded to the respondents to place on record the documents answering the issues addressed supra.

Needful be positively done within a period of two weeks, failing which the Court shall proceed that there is no other material bounding the petitioner to the conditions of the GCC, more so, in view of the objection raised by the petitioner before the arbitral Tribunal, not conceding to their jurisdiction.

Also significantly, it may be noticed that vide communication dated 3rd of March, 2020 (Annexure-9 Page No. 113) though the respondent had referred to Clause 64 of the GCC but the respondent had refuted such stand



vide its communication dated 18th of March, 2020 (Annexure-10 Page No. 114) also reserving its right to nominate a person as its arbitrator in terms of the agreement entered into between the parties.

List this case on 2nd of February, 2022.”

Today, there is no dispute about-(a) the legality, validity and binding effect of a written agreement dated 01.10.2015 and subsequently entered into between the parties to the lis; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arising therefrom; (d) the dispute arisen out of the agreement being civil in nature; (e) no legal impediment in the adjudication of the dispute by the learned Arbitrator/s; (f) Petitioner having exhausted the channel available for resolution of dispute; (g) the respondent having failed to appoint an Arbitrator/s pursuant to the invocation of the arbitration clause by the petitioner.

Parties agree for referring the dispute afresh to a duly constituted tribunal in terms of and under Clause-26.4, reproduced (supra).

Shri P.N. Shahi, learned Senior Advocate, suggests the name of Shri Anurag Sharma, Ex-IRSE & Retired Chief Engineer, Railways, R/o PMD 013, DLF Princess Garden City, Sector 82A, Gurugram-122004, Mobile No.9873440789 to be



the nominee of the petitioner when Dr. K.N. Singh, learned A.S.G., suggests the name of Shri Vijay Prakash Pathak (IRSS) Retd. Member, Material Management/RB, Teacher's Colony, Vidyasagar Marg, Mirzapur, Uttar Pradesh-231001, Mob. No.8800991000, Email I.D. Pathakvp1959@gmail.com, one amongst the empanelled arbitrators, as nominee of the respondent Board.

It is suggested that the third arbitrator be also appointed today itself.

Learned counsel jointly agree for Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge of this Court.

As such, as jointly prayed for, Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge of this Court, is appointed as the third Arbitrator to adjudicate all disputes arising out of agreement dated 01.10.2015, 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 Arbitrators shall be entitled to fee as per the Act.

Since the dispute arises out of an agreement of the year 2015, the hearing be expedited.



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

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

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

Learned counsel for the parties also undertake to communicate the order to the learned Arbitrators. In fact, they volunteered to appear before them on 30.05.2022 and apprise them of the passing of the order.

Parties shall file their statement of claims before the learned Arbitrators on such date of hearing which they may fix, as per mutual convenience.

The Request Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	09/05/2022
Transmission Date	

