

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11136 of 2019

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The Best Tower 9/2 Industrial Area, Patna-800013, At present Ground Floor, Surya Nanda Apartment, North of Hospito India, Budha Colony, Patna through its managing Director Pervez Ahmad, aged about 67 years Gender-Male, Son of Late Dr. Tahir Hussain, R/o B-55, Ground Floor, PCC Kankarbagh Patna-800020 (Bihar), P.O.-Lohia Nagar, P.S. Kankarbagh, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Industry Department, Government of Bihar, Patna
2. The Director of Industries Industry Department, Bihar, Patna
3. The Chairman/Chairperson Micro and Small Enterprises Facilitation Council (under MSMED Act 2006) Directorate of Industries, 2nd Floor, New Secretariat, Patna-1
4. The Managing Director Larsen and Toubro Ltd. L and T House, Ballard Estate , P.O. Box No. 278, Mumbai-400001, Local Office-First Floor, Baleshwar Bihar, Boring Canal Road, (West), Patna-800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Adv.
For the Respondent No. 4	:	Mr. Amit Shrivastava, Sr. Adv.
		Mr. Girish Pandey, Adv.
For the State	:	Mr.Kinkar Kumar (Sc9)

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

14 13-07-2022 We have heard Sri Ranjeet Kumar, Advocate for the petitioner and Mr. Amit Shrivastava, Senior Advocate for the Respondent No. 4.

Shorn of the details, it would suffice to



state that the present writ petition arises out of a dispute emanating on account of delayed payment made to the petitioner, pertaining to various invoices, by the Respondent No. 4, i.e. Larsen & Toubro Ltd., leading to filing of a case by the petitioner bearing Reference Case No. 1/2015, before the Micro & Small Enterprises Facilitation Council, Directorate of Industries, Patna (hereinafter referred to as the MSE Facilitation Council, Patna), which in turn has resulted in reference of dispute by the MSE Facilitation Council, Bihar, Patna to a sole arbitrator, with the consent of the parties, which is under challenge, at the behest of the petitioner, in the present proceedings. In this connection, it would be apt to refer to the minutes of meeting of MSE facilitation Council held on 9th May 2018 as also on 10th October 2018, which are reproduced hereinbelow:-

"Minutes of meeting dated 9.5.2018

Reference No. 01/2015 M/s The Best Towers Pvt. Ltd., 9/2, Industrial Area,



Patna versus M/s Larsen & Toubro Limited

Both the parties were present.

In the meeting dated 21st August, 2017, both the parties were directed to sit together for conciliation to settle the issues of quantum of interest to be paid to the Applicant for delayed payment. As agreed by both the parties, venue of conciliation was fixed in the local office of L & T.

In the meeting dated 16th November, 2017 Mr. Prakash Singh, Representative of L & T said that there is no issue of conciliation; they have paid the principal amount. Further he raised the issue that their company has taken job from the Railway against which the applicant was ordered to supply the job work as per specification of Railway. The Railway has not paid full amount and has raised objection in respect of work done by the applicant for which Arbitration proceedings with Railway is going on from March, 2014.



Applicant said that he had completed the assigned work/job to the satisfaction of the Buyer/respondent for which certificate dated 1.11.2012 for satisfactory completion of work was also issued and after 4-5 years raising objection on quality of work is not desirable. As matter is being contested the Council requested to the Registrar General, High Court, Patna to provide the panel of Arbitrator vide letter No. 3986 dated 22.12.2017 so that Arbitrator can be appointed u/s 18(3) to resolve the dispute. The Registrar General, High Court, Patna vide his Memo No. 4724 dated 18.1.2018 informed this council that there is no panel of arbitrator. Further he suggested the council to proceed itself in this matter under provision of the MSMED Act, 2006.

Counterclaim has been filed by the respondent/buyer. Respondent is directed to serve a copy of the counterclaim to the applicant.

Respondent buyer stated that Arbitral award has been passed on 30.1.2018 in



which work of the supplier has been declared unsatisfactorily, hence, he is not entitled for payment.

As the respondent buyer is not agreeing to pay the interest for delayed payment, hence, conciliation failed. Both the parties were directed to suggest the names of three arbitrators, so that a sole arbitrator with the consent of both the parties be appointed for arbitration."

"Minutes of meeting dated 10th October, 2018"

Reference No. 02/2016 M/s The Best Towers Pvt. Ltd., 9/2, Industrial Area, Patna-800013 versus M/s ATC Telecom Infrastructure pvt. Ltd. (Formerly VIOM NETWORKS Ltd.) Office: Plot No. 09, Patliputra colony, near Golamber, Beside UNICEF Office, Patna-800 013

Both the parties were present.

The Hon'ble High Court, Patna vide its order dated 20.2.2018 has given a



direction to the Facilitation Council to decide the issue within a period of 60 days from the date of receipt/production of a copy of the judgment, which was produced on 13th March, 2018 by the complainant.

In the meeting dated 9th May, 2018 both the parties were agreed to sit together for conciliation and it was decided that first sitting will be held on 10th May, 2018 and it will be completed within 15 days.

In this meeting the applicant said that he was called for conciliation at the Head quarter, but after one sitting, no response was taken by the respondent. It was brought to the notice of the Council that conciliation failed. Hence, it was decided to refer this matter to the sole Arbitrator, Hon'ble Mr. Shashank Kumar Singh, Justice (Retd.)."

It is the complaint of the learned counsel for the petitioner that though the reference case in question was initiated before the MSE Facilitation



Council, Bihar, Patna regarding the issue of quantum of interest to be paid to the petitioner for delayed payment and it is the said issue, which has been referred to the learned sole arbitrator i.e. Hon'ble Justice Shashank Kumar Singh (Retd.) under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "MSMED Act, 2006), but the Respondent No. 4 has set up a counterclaim before the learned sole arbitrator belatedly, which is illegal.

Per contra, the learned Senior Counsel for the Respondent No. 4 has though submitted that the Respondent No. 4 has a counterclaim and it is well within its right to raise the same before the learned arbitrator, but has not denied the fact that no agreement had ever been entered into between the parties, thus, there being no arbitration clause/agreement qua the respective parties for resolution of disputes, the only recourse open to the Respondent No. 4 is to raise



its claim elsewhere by availing such other remedies, as are available under the law.

After hearing the learned counsel for the parties at length on several occasions and after great deliberations on the subject-matter, the petitioner and the Respondent No. 4 now stand on a common platform and have agreed for disposal of the present case by authorising the learned sole arbitrator to arbitrate on the issue of quantum of interest, after considering the objections / written statement of the Respondent No. 4 and the evidences to be led by the respective parties, however, the learned sole arbitrator shall not adjudicate on the counter claim filed by the Respondent No. 4, nonetheless, the Respondent No. 4 shall be free to take recourse to such remedies as are available under the law qua its counterclaim.

Having regard to the facts and circumstances of the case, we deem it fit and proper to dispose of the present writ petition,



with the express consent of the parties by directing the learned sole arbitrator, Justice Shashank Kumar Singh (Retd.) to only adjudicate upon the issue of quantum of interest to be awarded or not to be awarded to the writ petitioner, after considering the objections / written statement of the Respondent No. 4 as also upon taking into account the evidences to be led by the respective parties and pass the necessary award, in accordance with law. However, it is made clear that the learned sole arbitrator shall not consider the counterclaim filed by the Respondent No. 4 and the same shall stand withdrawn. Consequently, the Respondent No. 4 is granted liberty to pursue his counterclaim by taking recourse to such remedies as are otherwise available under the law and in case such remedies are availed within a period of four months from today, the issue of limitation shall not stand in the way of the Respondent No. 4 and its claim shall be decided



on merits, in view of the peculiar facts and circumstances of the present case

At this juncture, the learned counsel for the parties have raised an issue to the effect that the learned sole arbitrator has fixed his fees to the tune of Rs. 37,000,00/-, hence, it be clarified that the same shall be shared equally by the petitioner and the Respondent No. 4. It is clarified accordingly.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

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