

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.48 of 2023

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Kems Services Pvt.Ltd. through its Managing Director Mr. Mohan Kumar Khandelwal , aged about 59 Years, (Male), Son of Durga Prasad Khandelwal, Mohalla-Bandar Bagicha, Dak Bunglow Road, P.O.-GOP, P.S.-Kotwali, District-Patna-800001. Official Address-76, B1/B Mourya Lok Complex, Dak Bunglow Road, P.S.-Kotwali, District-Patna-800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Bailey Road, Patna-15.
2. The Principal Secretary, Water Resources Department, Sinchai Bhawan, Bailey Road, Patna-15.
3. The Engineer-In-Chief (Flood Control and Water Drainage), Water Resources Department, Sinchai Bhawan, Bailey Road, Patna-15.
4. The Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Katihar-854105.
5. The Superintending Engineer, Flood Control Circle, Water Resources Department, Bhagalpur-812001.
6. The Executive Engineer, Water Resources Department, Flood Control Division, Naugachia (Bhagalpur)-812001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Sahay, Advocate
For the Respondent/s : Mr. Vikas Kumar, AC to A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 26-07-2023

Heard learned counsel for the parties.

2. 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.

3. Petitioner and the respondent entered into an agreement dated 02.03.2009 (Annexure-2). The said agreement



contains an arbitration clause as Clause-25. The petitioner invoked the said arbitration clause vide communications dated 31.05.2022 (Annexure-18), dated 11.06.2022 (Annexure-19) and an appeal dated 12.07.2022 (Annexure-20), which was rejected denying the claim of the petitioner on 18.08.2022.

4. It is pleaded that the respondents have not settled the dispute till date and the dispute is of civil in nature.

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

6. As such, Hon'ble Mr. Justice Shyam Kishore Sharma, a former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement entered into between the parties to the *lis*.

7. All pleas and issues raised, on merits, are left



open to be considered and decided by the learned Arbitrator.

8. The learned Arbitrator shall be entitled to fee as per the schedule of the Act.

9. Since the dispute arises out of an agreement of the year 2009, the hearing be expedited.

10. The issue of limitation, if any, is left open to be raised before the Arbitral Tribunal.

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

12. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator.

13. The Arbitral Tribunal shall issue notice to the respondents.

14. The Request Petition stands disposed of in the above terms.

(K. Vinod Chandran, CJ)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2023
Transmission Date	

