

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.49 of 2023

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Pushpheera Infrastructure Pvt. Ltd., through its Managing Director, Sri Nishant Sinha, Male, aged about 44 years, Son of Suresh Shanker Sinha, having its registered office of Swaraj Bhawan, 163, East Boring Canal Road, P.S. Buddha Colony, Patna- 800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Bihar State Food and Civil Supplies Department, Government of Bihar, Patna.
3. The Bihar State Warehousing Corporation, through its Chairman having its office at B/2, 1st Floor, Maurya Lok Complex, Patna.
4. The Managing Director, Bihar State Warehousing Corporation, B/2, 1st Floor, Maurya Lok Complex, Patna.
5. The Food Corporation of India through its Chairman-cum-Managing Director, 16-20, Barakhamba Lane, New Delhi- 110001
6. The General Manager, Food Corporation of India, East Zone (Bihar Office) having its office at J-45R GMW, Arunachal Bhawan, 4th floor, Exhibition Road Area, Near Exhibition Chauraha, Patna- 800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kunal Tiwary, Advocate
For the Respondent/s	:	Mr. Anjani Kumar (AAG-4)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 26-07-2023

The petitioner had entered into an agreement with the respondent/Bihar State Warehousing Corporation as per Annexure-5 dated 29.06.2020 which contains the Arbitration Clause at Clause 16. The learned counsel appearing for the



respondent objects to the arbitration request on the ground that already the Managing Director of the Warehousing Corporation has appointed a Chief Engineer of the Corporation in terms of the agreement. It has to be noticed that the appointment stands against Section 11 of the Arbitration Act, as has been held in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., 2020 20 SCC 760***. In the above circumstances, the arbitrator appointed by the Corporation cannot proceed with the arbitration since he has to be considered as an interested person.

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

3. Considering (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 arisen 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, there has to be an arbitration initiated.



4. As such, on agreement of the parties, Hon'ble Justice Smt. Nilu Agrawal, 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*.

5. All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

6. Learned Arbitrator shall be entitled to fee as per the schedule of the Act.

7. Since the dispute arises out of an agreement of the year 2020, the hearing be expedited.

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

9. The issue of limitation, if any, is left open to be raised before the learned Arbitrator.

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

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

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



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

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

(K. Vinod Chandran, CJ)

sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2023
Transmission Date	

