

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.62 of 2023

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M/s R.R. Agrotech, a Proprietary Concern having its Principal Place of Business at 2603, Nai Basti, Naya Bazar, New Delhi-110006 through its Authorized Signatory Manish Kumar Sinha, Male, (Aged about 38 Years) Son of Late Sushil Kumar Sinha Resident of Sindhua Toli, Belwar Ganj Sampachak P.S. Gulzarbagh, District-Patna.

... .. Petitioner/s

Versus

1. Bihar State Ware Housing Corporation (BSWC), B-2, Ist Floor, Maurya Lok Complex, Dak Bungalow Road, P.S. Kotwali, Town and Distirct Patna through its Managing Director.
2. The Managing Director, Bihar State Ware Housing Corporation, B-2, Ist Floor, Maurya Lok Complex, Dak Bungalow Road, P.S. Kotwali, Town and Distirct Patna.
3. The Divisional Manager, Revenue Section, Bihar State Ware Housing Corporation, B-2, Ist Floor, Maurya Lok Complex, Dak Bungalow Road, P.S. Kotwali, Town and Distirct Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, Sr. Advocate Mr.Mohit Agarwal, Advocate
For the Respondent/s	:	Mr. Mithilesh Kumar Rai, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 07-10-2023

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. The petitioner is concerned with an agreement dated 29.11.2013 and the specific arbitration clause is referred



to from Annexure-1. There is no dispute with respect to the arbitration clause.

4. The learned counsel for the respondent objects to the request made, on the ground that the petitioner has, with malicious intention, misappropriated/embezzled foodgrains amounting to more than Rs. 4 crores and a criminal case bearing No. 81/2023 dated 08.02.2023 under Sections 406, 409 and 420 of the India Penal Code has been lodged with the Udwantnagar Ara P.S., Bhojpur.

5. Usefully, reference may be made to the decision in *Avitel Post Studios Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, (2021) 4 SCC 713. Therein a distinction between a contract obtained by fraud and performance of a contract being vitiated by fraud or cheating was highlighted. The latter was found to fall outside the ambit of Section 17 of the Contract Act, for which the remedy of damages would be available and not the remedy of treating the contract itself as void; which remedy would be available in the case of the former. In that decision, on facts, it was found that there was fraudulent inducement to enter into a contract under Section 17 of the Contract Act; which makes it voidable and there was an element of siphoning off of funds, which pertains to the actual



performance of the contract, attracting the tort of deceit. However, though there was fraudulent inducement to enter into the contract, on the specific terms of the arbitration clause, it survived as an independent clause; was the finding. The words employed in the arbitration clause permitted resolution of any dispute, controversy or claim, including any question regarding the existence of the contract, validity, interpretation, breach or termination.

6. In *Avitel Post Studios Ltd.* (supra), the identical issue was considered. If there is a fraud committed in execution of the agreement itself; which fraud led to the execution, then the arbitration clause would not be applicable, unless the arbitration clause extended to cover resolution of that dispute also. However, if a fraud is committed in the working of the agreement then the arbitration clause would have full operation and the dispute shall be settled by arbitration.

7. In the above circumstances, Hon'ble Mr. Justice Jyoti Saran, 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*.

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



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

10. Since the dispute arises out of an agreement of the year 2013, the hearing be expedited.

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

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

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

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

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

(K. Vinod Chandran, CJ)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.10.2023
Transmission Date	

