

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**REQUEST CASE No.96 of 2022**

1. M/s Fadle Chem Pvt. Ltd. (a private limited Company) through its Managing Director Mritunjay Kumar @ Mritunjay Singh, aged about 37 years, male, son of Anil Kumar Singh, having its Office at Ward No. 3, New Colony, Dharampur, P.S.- Samastipur, District- Samastipur, Bihar.
2. M/s Rajesh Kumar (A proprietorship firm) through its proprietor Rajesh Kumar, aged about 50 years, male, Son of Narendra Kumar Pandey, having its office at Amgola Naka Gali, P.O. - Ramna, P.S.- Muzaffarpur, District - Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

M/s SKC Projects Pvt. Ltd. (A Private Limited Company), through its Director Mr. Bijender Singh @ Brijendra Singh Bhadana (male), Age -not known, S/o Not known at present having Registered Office at D-103, 1st Floor, Sector- 108 Noida, Gautam Budh Nagar, (U.P.) and also at 1/3354 Ram Nagar, Shahdara, Delhi, East Delhi, 110032. (CIN No. UP 45400DL2012PTC239760, PAN No. AASCS0072K) E-mail Address- Skcprojectspvtltd@gmail.com.

... .. Respondent/s

**Appearance :**

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For the Petitioner/s | : | Mr. Kumar Nikhil, Advocate         |
| For the Respondent/s | : | Mr. Naresh Chandra Verma, Advocate |

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**ORAL JUDGMENT**

**Date : 13-10-2023**

The petitioner is a Contractor engaged in governmental works, who had taken a contract from the Union Territory of Jammu and Kashmir, as is seen from Annexure-C of the counter affidavit of the respondent. Pursuant to the same, the petitioner is said to have entered into another contract with the respondent herein, which is produced at Annexure-2. The terms of the contract at Annexure-2 was to execute the work awarded to the petitioner by Annexure-C.



2. The learned counsel appearing for the respondent specifically points out that the contract obtained by the petitioner as per Annexure-C was with a specific condition that it shall not be sub-let, as is seen from clause No.28 of Annexure-C, which is extracted herein:-

**28. Subletting of Work:-**

*The bidder shall not sublet the whole or part of the work. The bidder shall not assign the work or any part thereof or any benefit or any interest thereon or any claim arising of the contract, without prior written consent of the allotting authority.*

The learned counsel for the respondent, however, submits that the Department which granted the petitioner the contract was aware of it and the respondent had never raised an issue on that.

3. In fact, there is nothing to show that the respondent was communicated the specific bar, as is seen from Annexure-C contract. There is nothing to show that the respondent was put to notice of the specific bar in Annexure-C agreement.

4. Useful reference may be made to the decision in *Avitel Post Studioz 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.

**5. *Avitel Post Studioz Ltd.*** (supra) applies squarely. If there is a fraud committed in the 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. Herein the contract was entered into by the petitioner with the respondent; sub-letting the contract which they obtained from the Union Territory of J&K. The contract of the petitioner with J&K contained a clause prohibiting such sub-letting. Hence, the deceit played by the petitioner resulted in the contract being entered into by the respondent. The contract itself is hence vitiated. The petitioner cannot claim arbitration; which is a term in the contract entered into by the deceitful inducement.

6. The request case stands dismissed.

**(K. Vinod Chandran, CJ)**

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| Uploading Date    | 17.10.2023 |
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