

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20350 of 2021

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South Bihar Power Distribution Company Limited (a Government of Bihar Undertaking) registered under the Companies Act, 1956 having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Road, Patna-800021 through its Chief Engineer Commercial.

... .. Petitioner/s

Versus

Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956 having its registered office at 22, Abhinanda Nath Thakur Sarani, Block-A, 3rd floor Kolkata-700016 through its Assistant Manager (Legal) Sri Anshuman Mishra, S/o Sri Ram Kumar Mishra, resident of Bikhanpura, at P.O. and District- Bhagalpur.

... .. Respondent/s

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with

REQUEST CASE No. 147 of 2018

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South Bihar Power Distribution Co. Ltd., through its Chief Engineer Commercial Sri Vijay Kumar a Company, a company registered under the Companies Act, 1956 having its office at Vidyut Bhawan, Jawahar Lal Nehru Road, P.S.- Kotwali, Town and District- Patna.

... .. Petitioner/s

Versus

1. SPML Infra Ltd., a Public Limited Company incorporated under the Companies Act, 1956 having its Office at 22, Abanindra Nath Thakur Sarani (formerly known as Camac Street), Block- 'A', 3rd Floor, Kolkata-700016 (West Bengal).
2. Bhagalpur Electricity Distribution Co. Pvt. Ltd., incorporated under the Companies Act, 1956 having its office at Abanindra Nath Thakur Sarani formerly know and Camac Street, Block-A, 3rd Floor, Kolkata-700016 (West Bengal).

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 13762 of 2018

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SPML Infra Limited, having its office at Abanindranath Thakur Sarani (formerly known and Camac Street), Block-A, 3rd Floor, Kolkata-700016 West Bengal, through its Deputy General Manager, Major (Retired) Gaje Singh, son of Late Mr. Hukum Singh, resident of House No. 7A, Kailash



Enclave, Near Sangita Apartment, Shiv Puri Police Station Sastrinagar, Patna-800023.

... .. Petitioner/s

Versus

1. South Bihar Power Distribution Company Ltd., having its registered office at Vidyut Bhawan, Bailey Road, Patna through its Chief Engineer (Commercial).
2. Bhagalpur Electricity Distribution Company Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its office at Abanindranath Thakur Sarani (formerly known as Camac Street, Block-A, 3rd Floor, Kolkata-700016 (West Bengal) registered office at Vidyut Bhawan, Bailey Road, Patna, Bihar-800021.

... .. Respondent/s

with

Miscellaneous Appeal No. 635 of 2021

South Bihar Power Distribution Company Limited (a Government of Bihar Undertaking) registered under the Companies Act, 1956 having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Road, Patna- 800021 through its Chief Engineer (Commercial).

... .. Appellant/s

Versus

1. Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956 having its registered office at 22, Abhinanda Nath Thakur Sarani, Block- A, 3rd Floor Kolkata- 700016 through its Assistant Manager (Legal) Sri Anshuman Mishra S/o Sri Ram Kumar Mishra, Resident of Bikhanpura, at P.O. and District Bhagalpur.
2. Mr. Justice Chandramouli Kumar Prasad (a former Judge of the Supreme Court of India), Residing at 5, Sunehari Bagh Road, New Delhi.
3. Mr. Justice Prabir Kumar Samanata (a former Judge of the Calcutta High Court), Residing at 4/C, Kabir Road, Kolkata- 700026.
4. Mr. Justice Sudhir Kumar Katriar (a former Judge of the Patna High Court), Residing at Bailey Road, North of Planetarium, Patna- 800001.

... .. Respondent/s

with

Miscellaneous Appeal No. 638 of 2021

South Bihar Power Distribution Company Limited (a Government of Bihar Undertaking) registered under the Companies Act, 1956 having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Road, Patna - 800021 through its Chief Engineer (Commercial)



... .. Appellant/s

Versus

1. Bhagalpur Electricity Distribution Company Private Limited, a Private Limited Company registered under the Companies Act, 1956 having its registered office at 22, Abhinanda Nath Thakur Sarani, Block - A, 3rd floor Kolkata - 700016 through its Assistant Manager (Legal), Sri Anshuman Mishra, S/o Sri Ram Kumar Mishra, Resident of Bikhanpura, at P.O. and District - Bhagalpur.
2. Mr. Justice Chandramouli Kumar Prasad, (a former Judge of the Supreme Court of India), residing at 5, Sunchari Bagh Road, New Delhi.
3. Mr. Justice Prabir Kumar Samanata, (a former Judge of the Calcutta High Court), residing at 4/C, Kabir Road, Kolkata - 700026.
4. Mr. Justice Sudhir Kumar Katriar, (a former Judge of the Patna High Court), Residing at Bailey Road, North of Planetarium, Patna - 800001.

... .. Respondent/s

with

REQUEST CASE No. 5 of 2022

Bhagalpur Electricity Distribution Company Private Ltd. a Company Incorporated Under the Provisions of the Companies Act, 1956 having its Office at 22, Abanindranath Thakur Sarani (formerly known as Camac Street), Block-A, 3rd Floor, Kolkata-7000016 (West Bengal) registered office at Vidyut Bhawan, Bailey Road, Patna, Bihar-800021 through its authorized signatory Sri Amar Chand Bakliwal, (Male) aged about 67 years, Son of Late Subhag Mal Bakliwal, Resident of Gains at 22, Camac Street, Block A, 3rd Floor, P.S. Shakespare Sarani, Kolkata 700016.

... .. Petitioner/s

Versus

1. South Bihar Power Distribution Company Ltd., having its registered office at Vidyut Bhawan, Bailey Road, Patna through its Chief Engineer (Commercial).
2. Chief Engineer (Commercial), South Bihar Power Distribution Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
3. The Managing Director, South Bihar Power Distribution Company Ltd, Vidyut Bhawan, Bailey Road, Patna-21.
4. Engineer (Commercial), South Bihar Power Distribution Company Ltd, Vidyut Bhawan, Bailey Road, Patna-21.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 20350 of 2021)

For the Petitioner/s

: Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate



Mr. Vaibhava Veer Shanker, Advocate
For the Respondent/s : Mr. Ashish Giri, Advocate
(In REQUEST CASE No. 147 of 2018)
For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate
Mr. Vaibhava Veer Shanker, Advocate
For the Respondent No.1 : Mr. Pranav Kumar, Advocate
For the Respondent No.2 : Mr. Ashish Giri, Advocate
(In Civil Writ Jurisdiction Case No. 13762 of 2018)
For the Petitioner/s : Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate
Mr. Vaibhava Veer Shanker, Advocate
For the Respondent No.2 : Mr. Ashish Giri, Advocate
(In Miscellaneous Appeal No. 635 of 2021)
For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate
Mr. Vaibhava Veer Shanker, Advocate
For the Respondent/s : Mr. Ashish Giri, Advocate
(In Miscellaneous Appeal No. 638 of 2021)
For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate
Mr. Vaibhava Veer Shanker, Advocate
For the Respondent/s : Mr. Ashish Giri, Advocate
(In REQUEST CASE No. 5 of 2022)
For the Petitioner/s : Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Anand K. Ojha, Advocate
Mr. Vaibhava Veer Shanker, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 26-04-2023

In these bunch of cases, the issues are common and interrelated, as such, all have been heard together and are being



disposed of by this common judgment. The reliefs sought by the petitioners are as under :

2. In CWJC No. 20350 of 2021 (South Bihar Power Distribution Company Limited vs. Bhagalpur Electricity Company Private Limited)

This petition has been filed by the South Bihar Power Distribution Company Limited (SBPDCL) under Article 227 of the Constitution of India. In the instant petition, petitioner has prayed for the following reliefs:-

"(I) To quash and cancel the Judgment/order dated 25.09.2021 passed by Sri Sunit Datta Mishra in Arbitration case no. 1 of 2017 the learned District Judge being the Principal Civil Court within the meaning of section 2(e) of Arbitration and Conciliation Act, 1996 and a Commercial Court notified in accordance with section 3 of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015;

(II) To issue other interim and final order or orders, direction or directions, writ or writs as this Hon'ble Court may deem fit proper in the facts and circumstances of this case;"

3. Request Case No. 147 of 2018 (South Bihar Power Distribution Co. Ltd, through its Chief Engineer (Commercial) vs. SPML Infra Ltd. and Anr.)



This petition has been filed by the South Bihar Power Distribution Co. Ltd. under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996. In the instant petition, petitioner has prayed for the following reliefs:-

"For appointment of an Arbitrator on behalf of the Respondent No. 1 before this Hon'ble Court in accordance with the 'Arbitration Agreement' as contained in Clause 17.2.5 and 17.2.6 of the 'Distribution Franchisee Agreement' dated 19th July, 2013 between the petitioner and the Respondent No. 1, whereas the proforma Respondent No. 2 being the Agent 'Special Purpose Vehicle' appointed by the Respondent No. 1 is a confirming party and/or an Agent or Respondent No. 1 to the said agreement."

4. CWJC No. 13762 of 2018 (SPML Infra Limited vs. South Bihar Power Distribution Company Ltd. and Anr)

This petition has been filed by the SPML Infra Limited under Article 226 of the Constitution of India. In the instant petition, petitioner has prayed for the following reliefs:-

"i) To issue a writ/order/ direction for quashing the notice under section 21 of the Arbitration and Conciliation Act, 1996 issued vide letter no. SBC366/2015/388 dated 11.06.2018 by the respondent South Bihar Power Distribution Company Limited through Chief Engineer (Commercial) by which dispute has been raised against the petitioner and seeking for resolving



*the same by way of arbitration.
(Annexure- 7).*

ii) To hold and declare that the notice under section 21 of the Arbitration and Conciliation Act, 1996 issued vide letter no. SBC-366/2015/ 388 dated 11.06.2018 by the respondent South Bihar Power Distribution Company Limited through Chief Engineer (Commercial) is wholly without jurisdiction as there is no arbitration clause with the petitioner in terms of the Distribution Franchise Agreement dated 19.07.2013 and also for the same an arbitration was already going on for the same dispute with M/s Bhagalpur Electricity Distribution Company Private Limited wherein Arbitration Case No. 106 of 2016 and hence they cannot be second arbitration in relation to the same dispute arising out of the same agreement.

iii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

5. M.A. No. 635 of 2021 (South Bihar Power Distribution Company Limited vs. Bhagalpur Electricity Distribution Private Limited)

This Misc. Appeal has been filed by the South Bihar Power Distribution Co. Ltd. under Section 37 of the Arbitration and Conciliation Act, 1996. In the instant appeal, the appellant has prayed for the following reliefs:-



"For quashing the judgment/ order dated 25.09.2021 passed by the District Judge Patna being the Principal Civil Court as also the Commercial Court constituted under section 3 of the Commercial Court, Commercial Division and Commercial Appellate Division of High Court Act 2015 in Arbitration Case No. 164/2017."

6. M.A. No. 638 of 2021 (South Bihar Power Distribution Company Limited vs. Bhagalpur Electricity Distribution Company Private Limited)

This Misc. Appeal has been filed by the South Bihar Power Distribution Co. Ltd. under Section 37 of the Arbitration and Conciliation Act, 1996. In the instant appeal, the appellant has prayed for the following reliefs:-

"For quashing the judgment/order dated 25.09.2021 passed by Shri Sunil Datta Mishra, the District Judge Patna being the Principal Civil Court as also the Commercial Court constituted under section 3 of the Commercial Court, Commercial Division and Commercial Appellate Division of High Court Act 2015 in Arbitration Case No. 165/2017."

7. Request Case No. 05 of 2022 (Bhagalpur Electricity Distribution Company Private Ltd. vs. South Bihar Power Distribution Company Ltd.)

This petition has been filed by the Bhagalpur Electricity Distribution Company Private Ltd. (BEDCPL) under Section 11



(6) read with Section 15 of the Arbitration and Conciliation Act, 1996. In the instant petition, petitioner has prayed for the following reliefs:-

"For substitution of the earlier arbitration tribunal in Arbitration Case No. 106 of 2016 in which two of the learned members of the tribunal namely the Presiding Officer, Justice Mr. Chandramauli Prasad (Retd.) and Mr. Justice Sudhir Kumar Katriar (Retd.) have shown their unwillingness to proceed with the arbitral proceeding any further and as such the mandate of the tribunal is deemed to be terminated in terms of Section 15 of the Arbitration and Conciliation Act, 1996."

8. Brief facts of the cases are that the Bihar State Electricity Board (for short "BSEB") issued Request For Proposal (for short "RFP") for appointment of distribution franchisee for Bhagalpur town and adjoining areas (Bid Specification No. DF-4/Bhagalpur/2012-13) dated 22.10.2012. It was also known as Appointment of Input based Distribution Franchisee (project summary). The franchisee area was to be Bhagalpur town and adjoining areas falling under BSEB in terms of the details contained in clause 2.5 of RFP document. In view of the fact that BSEB ceased to exist and was substituted by Bihar State Power Holding company Ltd (BSPHCL) and its four subsidiaries, one of which is South Bihar Power Distribution Company Ltd (SBPDC L) and it came into existence from 01.11.2012 being a company



registered under the Companies Act, 1956 and, as such, a corrigendum to RFP was issued notifying SBPDCL to be the successor of BSEB and ultimately SBPDCL as the distribution licensee was substituted in place of BSEB. A Pre-bid meeting was convened on 16.11.2012 at 11 A.M. Last date and time of Sale of Bid Document was assigned on 14.12.2012 at 5 P.M. Last date and time of receipt of Bid was assigned on 17.12.2012 at 5.00 P.M. Due date of opening was 18.12.2012 at 11 A.M. in Part I and Part II. Place of opening was in the Office of Chief Engineer (Commercial), BSEB Vidyut Bhawan, Bailey Road, Patna and Bid was required to be addressed to the Chief Engineer (Commercial) was fixed at Rs. 2,84,00,000/- (Rs. Two Crore Eighty Four Lakh only) by way of bank guarantee in the prescribed proforma from a nationalized/scheduled bank in favour of "DDA", Secretariat, BSEB, Patna payable at Patna. Clause 2.4.1 of RFP is relating to definition of Distribution Franchisee/Franchisee, Distribution Franchisee Agreement "DFA" and Parties etc.

9. Besides, the other facts incorporated in the pre-bid meeting, a detailed corrigendum no. 1 to RFP was prepared and issued by the authority of BSPHCL which included item nos. 40, 41 and 42 related to amendment in clauses 2.3.1, 4.1.10 and Exhibit 3 of RFP.



10. One of the companies which participated as an intending 'bidder' in the pre-bid meeting held on 16th November, 2012 at 11.00 A.M. was/is SPML Infra Ltd., registered under the Companies Act, 1956 having its Registered Office at 22, Camac Street, Block-A, 3rd Floor, Kolkata-700016, (hereinafter referred to SPML). SPML participated in the bidding process and was ultimately declared a successful bidder. Accordingly, a Letter of Intent (for short LOI) dated 21.03.2013 was issued in the name of successful bidder i.e. SPML for appointment of distribution franchisee for distribution and supply of electricity in Bhagalpur town and adjoining areas as per bids specification contained in RFP dated 22.10.2012 and a communication has been made by the Chief Engineer (Commercial), South Bihar Power Distribution Company Ltd. addressed to M/s SPML Infra Limited. Condition No. 6 is relevant. Clause 6 of the LOI reads as under:-

"M/s SPML Infra Limited or the Special Purpose Vehicle (which shall be 100% subsidiary of the M/s SPML Infra Limited for the entire term of the Distribution Franchise Agreement) is required to enter into Distribution Franchise Agreement as per Annexure 1 of the RFP document on a Non Judicial Stamp Paper of Rs. 500/- (Rupees Five Hundred Only) with the Distribution Licensee. You are also required to furnish the necessary resolution/issue Power of Attorney duly passed/issued by Board of Directors of M/s SPML Infra Limited in favour of the authorised signatory."



11. Thereafter, certain internal correspondences were made by the respective parties. The letter dated 05.04.2013 is relating to acceptance of LOI by the SPML Infra Limited. Further, communication dated 30.05.2013 was made on behalf of SPML Infra Limited to SBPDCL informing provision of Bhagalpur Electricity Distribution Company Ltd as Special Purpose Vehicle. SPML promoted a Special Purpose Vehicle (for short SPV) as per items no. 40 and 41 of the corrigendum no.1 to RFP dated 30.11.2012 and clause 6 of LOI under the name and style Bhagalpur Electricity Distribution Company Pvt. Ltd. (BEDCPL) a 100% subsidiary/ a company for purpose of executing the work and discharging the obligation.

12. In this backdrop, SBPDCL (the distribution licensee), M/s Bhagalpur Electricity Distribution Company Private Limited (for short "BEDCPL") (the SPV), incorporated by the successful bidder namely M/s SPML Infra Limited and M/s SPML Infra Limited Kolkata (the successful bidder) entered into a tripartite agreement called Distribution Franchise Agreement (for short DFA) for supply and distribution of electricity in Bhagalpur town and adjoining areas on 19.07.2013. The first part is SBPDCL, second part is M/s BEDCPL (further identified as distribution franchise) and third part is SPML Infra Limited (further identified as successful bidder). The agreement reveals



that "Each of the parties of the First, Second and Third parts are hereinafter, as the context may admit or require, individually referred to as a "Party" and collectively as the "Parties". Similarly, it is relevant to extract to clause G which reads as under:-

"G. M/s SPML Infra Limited, Kolkata undertakes that in the event of failure of compliance of obligation under the Distribution Franchise Agreement by M/s Bhagalpur Electricity Distribution Company Private Limited, Kolkata, all the obligations as per the Distribution Franchisee Agreement including the investment required in the Franchisee Area shall automatically become the responsibility of the M/s SPML Infra Limited, Kolkata who undertakes to discharge all the obligations-financial, commercial or otherwise-of M/s Bhagalpur Distribution Company Limited, Kolkata during the entire contract period."

13. Clause 5.5 of the agreement relates to Liabilities and Obligations. Clause 5.5 which reads as under:-

"5.5. Liabilities and Obligations

The Distribution Franchisee shall accept all liabilities and perform all obligations of the distribution licensee in the Franchise Area as franchise of Distribution Licensee, in compliance with the Law, Regulations and Directives of BERC issued from time to time as if they were to apply to licensee and directives of Distribution Licensee for compliance of laws, regulations, orders and directives of Distribution Licensee. The broad scope of work would be as follows:



5.5.1. Undertake distribution & supply power to the Consumers of Distribution Licensee in the Franchise Area.

5.5.2. Undertake all Operation & Maintenance related activities in Franchisee Area."

14. Clause 5.5.3 relates to **Treatment of ongoing contracts**. Clause 5.5.3.4 is relevant which reads as under:-

"Any legal liability or any other such liability on completed contracts shall be borne by Distribution Licensee and Distribution Licensee shall keep the DF completely indemnified in this regard."

15. Clause 17 relates to **Governing Law and Dispute Resolution**. 17.2 relates to **Amicable Settlement**. 17.2.1 to 17.2.11 reads as under:-

"17.2. Amicable Settlement

17.2.1. Either Party shall be entitled to raise any dispute or differences of whatever nature arising under, out of or in connection with this Agreement including its existence or validity by giving a written notice to the other Party, which shall contain:

*(i) The details of the Dispute;
(ii) The grounds for such Dispute; and
(iii) All documentary evidence in support of its claim.*

17.2.2. The other Party shall, within thirty (30) days of receipt of dispute notice issued under Article 17.2.1, furnish:

*(i) Counter-claim and defenses if any regarding the Dispute; and
(ii) All documentary evidence in support of its defenses and counter-claim.*



17.2.3. Both the parties shall constitute a permanent dispute resolution body having equal representation from each of the parties. The disputes or differences arising under this Agreement shall be referred for resolution to this body, which shall communicate its decision within Thirty (30) days.

17.2.4. In case of non-settlement of dispute by the permanent dispute resolution body, such dispute or differences shall be referred for decision to a body constituted by Chairman/ Managing Director of the distribution licensee and Head, Distribution Franchisee which shall communicate its decision preferably within a period of fifteen (15) days.

17.2.5. Any dispute arising out of, in connection with or with respect to this Agreement, the subject matter hereof, the performance or nonperformance of any obligation hereunder, which cannot be resolved by negotiation between the Parties and the Dispute Resolution procedure as stated in the foregoing Articles, shall be exclusively submitted to arbitration at the request of either party upon written notice to that effect to the other party and. The proceedings shall be conducted subject to the provisions of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) by a panel consisting of three arbitrators.

17.2.6. While submitting the dispute or difference to arbitration in accordance with this Article the Party so submitting shall, in its notice, specify the name of one arbitrator appointed by it. Within thirty (30) days of the receipt of notice, the other Party shall appoint an arbitrator. The third arbitrator (who will act as the chairman) shall be nominated by the two arbitrators appointed as aforesaid or, failing such nomination within thirty (30) days of the appointment of the second arbitrator, shall be appointed in accordance with the Arbitration and Conciliation Act, 1996.



17.2.7. The language of the arbitration shall be English. The venue of Arbitration shall be Patna.

17.2.8. The arbitration award shall be in writing. The arbitrators shall also decide on the costs of the arbitration proceedings.

17.2.9. The Parties agree that the award of the arbitrators shall be final and binding upon the Parties.

17.2.10. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Article 17 shall survive the Termination of this Agreement.

17.2.11. Both the parties shall continue to perform their respective obligations during the conduct of the Dispute Settlement Procedure."

16. Clause 17.3 relates to **Disputed Payments**. Clause 19 relates to **Miscellaneous Provisions**. For the present case, Clause 19.2 is relevant which reads as under:-

"19.2. The Parties shall establish formal communication means for purposes of exercising their respective rights and performing or complying with their respective obligations under this Agreement. Each of the Parties shall designate an Engineer-in-charge who is duly authorized to act on behalf of the respective Parties, to liaise for purposes of and carry out Agreement Management pertaining to the management of all matters related to the compliance with the requirements of this Agreement. The Engineer-in-charge shall be of the rank of Chief Engineer or equivalent and above from Distribution Licensee and a rank of General Manager and above from Distribution Franchisee."



17. Clause 19.12 relates to **Notices** which reads as under:-

"19.12. Notices

Notices to be given under this Agreement shall be in writing and in the English language. All notices must be delivered personally, by registered or certified mail or by facsimile transmission on the address given below (To be filled up at the time of execution of DFA):

For Distribution Licensee

*Electrical Superintending Engineer,
Electric Supply Circle, Bhagalpur
Phone: 0641-2401353
Fax: 0641-2401353
E-Mail: esebhagalpur@yahoo.in*

Franchisee Representative:

*Mr. Amanullah Md. Azmat Ali
Director, Bhagalpur Electricity
Distribution Company
Private Limited
Phone: 033-39445555
Fax: 033-39805303
E-Mail: amanullah@spml.co.in*

For Disputes & their Resolution

For Distribution Licensee

*Chief Engineer (Commercial),
SBPDCL Headquarter, Patna
Phone: 0612-2504832
Fax: 0612-2504832
E-Mail: cecom.sbpdccl@gmail.com*

Franchisee Representative:

*Mr. Harsh Vardhan Sethi
Director, Bhagalpur Electricity
Distribution Company Private Limited
Phone: 033-39805203
Fax: 033-39805277
E-Mail: harsh@spml.co.in*

18. Having entered into tripartite agreement, the dispute arose in execution of the agreement. BEDCPL raised dispute by



serving a notice dated 16.03.2016 appointing Hon'ble Mr. Justice Pravir Kumar Samanta, a former Judge of Kolkata High Court and called upon SBPDCL to appoint their arbitrator. SBPDCL did not appoint their arbitrator so BEDCPL filed Request Case No.06 of 2016 before this Hon'ble Court for appointment of arbitrator on behalf of SBPDCL; however, SBPDCL nominated Hon'ble Mr. Justice S.K. Katriar, a former Judge of this Court result whereof Request Case was withdrawn and the two arbitrators appointed a presiding arbitrator Hon'ble Mr. Justice Chandramauli Kumar Prasad, a former Judge of the Hon'ble Supreme Court on 14.05.2016.

19. The arbitration proceedings commenced before the Arbitral Tribunal which was numbered as Arbitration Case No. 106 of 2016 and the minutes of the preliminary meeting was conveyed and recorded on 26.05.2016. Issues were framed in the Arbitration Case on 04.03.2017. There were prayer to amend the issues and it was allowed on 20.05.2017, while extending arbitral proceedings by three months with the consent of the parties.

20. After commencement of arbitration proceedings, some issues arose and the parties moved before the court of learned District Judge, Patna by filing Misc. (Arbitration) Case Nos. 01 of 2017, 164 of 2017 and 165 of 2017. Misc. (Arbitration) Case No.01 of 2017 had been filed with a prayer to extend the time



for completion of the arbitral proceedings in relation to Arbitration Case No.106 of 2016 so as to enable the Arbitral Tribunal to pass the award. Misc. (Arbitration) Case No.164 of 2017 had been filed challenging the legality and validity of the interim award dated 05th August, 2017 passed by the learned Arbitral Tribunal by which I.A. No.10 of 2017 filed on behalf of SBPDCL has been rejected with cost in which the SBPDCL raised the question that the life of the Tribunal had already ended and hence extension of its life by order dated 20th May, 2017 was illegal. Misc. (Arbitration) Case No.165 of 2017 had been filed by SBPDCL challenging the legality and validity of the interim award dated 5th August, 2017 passed by the learned Arbitral Tribunal by which the application filed by SBPDCL under Section 16 of the Act giving rise to I.A. No.7 of 2017 had been rejected with cost of Rs.5 lacs.

21. SBPDCL filed I.A. No. 07 of 2017 under Section 16 of the Arbitration and Conciliation Act, 1996 in which question on jurisdiction of the arbitrator to proceed with the arbitration was raised, contending that BEDCPL being an agent of SPML had no right to initiate the proceeding in its own name when the Principal SPML is itself a party to the DFA in view of provision to Section 230 of the Contract Act, 1872. The other objection was in accordance with the definition of the word 'parties' in clause 2.2. of RFP, BEDCPL is not a party to arbitration agreement with



SBPDCL rather it is an arbitration agreement between SBPDCL/ Distribution Licensee and SPML being the successful bidder/distribution franchisee. Similarly, I.A. No. 10 of 2017 was filed by SBPDCL questioning the extension granted by Tribunal *vide* concerned order dated 20.05.2017 contending that Arbitral Tribunal's mandate had stood terminated on 13/14.05.2017 whereas the life/mandate of tribunal was extended on oral consent by the parties on 20.05.2017, that too, not with retrospective effect, as such, the tribunal had/have no right to continue the arbitral proceeding. Both the I.As were heard and reserved for order on 11.07.2017. On 05.08.2017 both the I.A Nos. 7 & 10 of 2017 were rejected while imposing cost of Rs. Five lacs (5,00,000/-) while upholding the order of extension of time by concerned parties.

22. M/s SPML Infra Limited wrote a letter to SBPDCL on 11.08.2017 to withdraw its notice dated 17.07.2017 in the light of order dated 05.08.2017 of the arbitrators. The SBPDCL issued a final notice of termination of distribution franchisee agreement to SPML Infra Limited on 25.11.2017. When things stood thus, on 11.06.2018 SBPDCL issued letter to SPML Infra Limited while invoking Section 21 of the Arbitration and Conciliation Act, 1996 for arbitration arising out of the same agreement (which is the subject matter of challenge in CWJC No. 13762 of 2018 filed by M/s SPML Infra Limited).



23. The SBPDCL filed arbitration case no. 164 of 2017 against the order rejecting I.A No. 07/2017 and arbitration case no. 165 of 2015 was filed against the rejection of I.A No. 10/2017 under Section 34 of the Act treating the order of the learned Arbitrator as an interim award. As the learned Tribunal did not come out with an award within the extended period of 3 months which expired on 19.08.2017, Arbitration Case No.106 of 2016 came to an end and thereafter, BEDCPL filed an application u/s 29-A(4) before the learned District Judge being the Principal Civil Court for extension of time on 01.09.2017 vide Arbitration Case No. 1/2017. The learned District Judge heard all the three arbitration applications together and passed judgments dated 25.09.2021 whereunder the District Court allowed the Arbitration Case No. 01/2017 and extended 6 months time permitting the arbitral tribunal to make an award from the date of order and dismissed the two arbitration cases being Arbitration Case Nos. 164 & 165 of 2017 filed by SBPDCL rejecting its plea regarding parties and jurisdiction of the Tribunal. Learned District Judge confirmed the extension granted by the Tribunal and held it to be in accordance with Section 29-A (3). Feeling aggrieved by the order dated 29.05.2021 SBPDCL preferred Miscellaneous Appeal No. 635 of 2021 before this Court.



24. In terms of order dated 25.09.2021 of the District Judge passed in (Miscellaneous) Arbitration Case No. 01 of 2017, Arbitration Case No. 106/2016 got revived by the Arbitral Tribunal. The SBPDCL preferred C.W.J.C No. 20350/2021 questioning the legality of the order dated 25.09.2021 by which the 6 months time to make an award was allowed. BEDCPL requested the learned Arbitrators to continue the proceeding but failed to fulfill the condition communicated by the Presiding Arbitrator and subsequently, the presiding arbitrator as also nominee arbitrator of SBPDCL communicated their unwillingness to continue with the proceeding on 04.10.2021. The SBPDCL has filed two appeals bearing MA Nos. 635 & 638 of 2021 under Section 37 of the Act challenging the legality and validity of the order of the learned District Judge. BEDCLP had filed Request Case No. 05/2022 under Section 11(6) read with Section 15 of the Act for substitution/appointment of arbitrator with an object to continue the arbitral proceeding which had stood terminated.

25. From the agreement and various correspondences among parties, it is evident that SBPDCL, BEDCPL and SPML Infra Limited or parties to the above bunch of cases are *ad idem* for the implementation and execution of the agreement in terms of clause wherein M/s SPML Infra Limited owes responsibility. To that effect an undertaking clause was incorporated.



26. Core question in these bunch of cases are:

- (i) Whether SPML should be a party and whether arbitration agreement existed only between SBPDCL and BEDCPL?
- (ii) Whether extension of period of arbitral tribunal is erroneous in law and its mandate stood terminated?
- (iii) Whether arbitral tribunal can be continued after substituting arbitrator on behalf of SBPDCL?
- (iv) Whether appointment of Arbitrator on behalf of SPML is necessary?
- (v) Whether substitution of Arbitrators on behalf of BEDCPL is warranted?
- (vi) Whether request of SBPDCL for appointment of Arbitrators on behalf of SPML and BEDCPL is maintainable?

27. The learned senior counsel appearing on behalf of SBPDCL submitted that Bhagalpur Electricity Distribution Company Private Limited (BEDCPL) raised the dispute under the arbitration clause of the Distribution Franchisee Agreement (DFA) instead of SPML Infra Ltd. The BEDCPL has no right to raise dispute against SBPDCL since BEDCPL was only Special Purpose Vehicle or an agent executing works on behalf of its principal SPML Infra Ltd. In terms of Section 230 of the Contract Act, an agent cannot sue in his own name. It is also submitted that there is no arbitration agreement existing between SBPDCL and BEDCPL



in view of the definition of parties in RFP. The learned senior counsel further submitted that from the Request for Proposal (RFP), Letters of Intent (LOI) and Draft for Agreement (DFA), it is amply clear that SPML Infra Ltd. is the successful bidder and this entity was appointed distribution franchisee for all intent and purposes. But due to mischievous wording in DFA, it appears that BEDCPL was appointed as distribution franchisee. The nomenclature or wording cannot change the intent and purpose meant in the aforesaid three documents, namely, RFP, LOI and DFA. There has been no doubt over the fact that it is the SPML which was required to give notice for appointment of Arbitrator in case any dispute arose since under Clause (G) of DFA, it has taken all the liabilities. It remained behind the curtain and allowed the BEDCPL to raise the dispute and appoint an arbitrator and also issued notice to SBPDCL to participate in the arbitration proceedings. However, SBPDCL filed a suit for rectification in the nomenclature/wording of the DFA vide Title Suit No. 351 of 2017 in the court of learned Subordinate Judge-1, Patna which is pending consideration even to this day. The learned senior counsel further submitted that the BEDCPL is only a special purpose vehicle floated by SPML. It is the holding company which created the BEDCPL as its subsidiary and it is only an agent for a limited purpose to execute the project strictly in accordance with the



provisions as contained in Request for Proposal and Letters of Intent. But in order to get rid of its liability, the SPML Infra Ltd. started promoting that the BEDCPL is only the party in dispute against SBPDCL. If the BEDCPL is treated as Distribution Franchisee Agent, the very process of issuing request for proposal and the object of selecting the successful bidder as distribution franchisee would be frustrated. The SBPDCL was under bonafide belief that by mistake the BEDCPL has been claimed as distribution franchisee, but it was by design and incorrect and non-existent facts were incorporated fraudulently to deceive and cheat the SBPDCL and to protect SPML from its liabilities. Thus, it has been submitted by the learned senior counsel that there was no privity of contract *inter se* between the SBPDCL and BEDCPL and this fact is clear from the words used in RFP that parties shall mean a reference to a selected bidder and BSEB/SBPDCL. As the principal SPML is itself the party to all the three above documents, as such, under Section 230 of the Contract Act, the BEDCPL is an agent and it has no right to sue. The learned senior counsel again reiterated that the agent has no right to sue even in a case where only an agent is the party to the contract but the principal is not. On the aforesaid aspect, the learned senior counsel relied on the following decisions:

***(i) Radha Sundar Dutta vs Mohd Jahadur Rahim
and ors AIR 1959 SC 24 (Para 11)***



(ii) RadhaKrishna Sivadutta Rai & Ors. Vs. Tayebali Dawoodbhai, reported in AIR 1962 SC 538 (Para 11 to 18)

(iii) National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors. reported in (2011) 12 SCC 695 (Para 30 and 31)

(iv) Union of India and Anr. Vs. Chinoy Chablani & Co. reported in AIR 1982 Cal 365 (Para 10 to 14).

28. The learned senior counsel appearing on behalf of SBPDCL further submitted that the learned District Judge failed to appreciate that the learned Arbitrator had wrongly assumed that the SBPDCL had challenged the jurisdiction of the Arbitrators rather the SBPDCL has challenged through out the BEDCPL not being as a party as defined under Section 2 (h) of the Act to an arbitration agreement as defined in Section 2 (b) read with Section 7 of the Act, as such, the respondents first party have no authority of law to initiate a proceeding i.e. an arbitration proceeding in accordance with the provisions of the Act which empowers only a party to an arbitration agreement to initiate a proceeding.

29. The learned senior counsel appearing on behalf of SBPDCL further submitted that the Hon'ble Supreme Court in the case of ***S.N. Prasad v. Monnet Finance Ltd., (2011) 1 SCC 320*** has held that, "*Thus there can be reference to arbitration only if there is an arbitration agreement between the parties. The Act makes it clear that an arbitrator can be appointed under the Act at the instance of a party to an arbitration agreement only in respect*"



of disputes with another party to the arbitration agreement. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties.

30. The learned senior counsel appearing on behalf of SBPDCL further submitted that the mandate of the arbitral tribunal stood terminated on 13.05.2017 since the Tribunal did not deliver award within 12 months of its constitution on 14.05.2016. Since the parties to the arbitration did not extend the mandate of the Tribunal, after expiry of its mandate on 13.05.2017, subsequently extension by three months purportedly on oral consent on 20.05.2017 was wrong since the mandate already stood terminated as on the date oral consent, i.e, 20.05.2017. Further, SBPDCL challenged the initiation of the proceeding as also continuation of the proceeding by filing I.A. No. 7 of 2017 and I.A. No. 10 of 2017, respectively on the ground that mandate of the Tribunal had already stood terminated. These two applications were rejected by an order dated 05.08.2017 and as the said order of the Tribunal was having force of interim award. The SBPDCL filed Misc. (Arbitration) Case Nos.164/2017 and 165/2017 on 01.09.2017 before the learned District Judge, Patna being the Principal Civil



Court, but the learned District Judge, Patna rejected both the petitions on 25.09.2021. Meanwhile, BEDCPL also moved before the learned District Judge, Patna for extension of the period of the Arbitral Tribunal under Section 29A (4) of the Arbitration and Conciliation Act and the learned District Judge extended the mandate of the Tribunal for further six months. Such order is illegal and incorrect and even after extension of mandate of the Arbitral Tribunal by oral consent, the same expired on 19.08.2017. The learned senior counsel relied upon a decision of the Supreme Court in the case of ***Jayesh H. Pandya & Anr. Vs. Subhtex India Ltd. & Ors. reported in (2020) 17 SCC 383*** as to termination of the mandate and refusal to extend the proceedings.

31. The learned senior counsel appearing on behalf of SBPDCL further submitted that the order of the learned District Judge dismissing the Arbitration Case No.164 of 2017 was illegal and incorrect. The SBPDCL has challenged the order dated 05.08.2017 passed by the learned Arbitral Tribunal rejecting the application of the SBPDCL being I.A. No.10/2017. The said interlocutory application was filed for determination of the mandate and life of the Tribunal on the ground that the mandate of the Tribunal stood ended and hence extension by order dated 20.05.2017 was without any authority of law. The prayer was made that the learned Arbitral Tribunal ought to decide whether on



28.05.2017 the said Tribunal had any jurisdiction to extend the life of the arbitration proceeding even with the consent of the parties.

32. The learned senior counsel appearing on behalf of SBPDCL further submitted that the term used in Section 29A (4) is extension of the period to Arbitral Tribunal and not revival and once the mandate of the Tribunal has come to an end, the learned District Judge could not have extended the mandate since the word 'extend' denotes that an application by the party was needed to be filed for extension for making the award during the subsistence of the mandate/life of the tribunal, i.e., within 12 months and/or within the extended period by the parties and not after the mandate of the Arbitral Tribunal stood terminated on expiry of the period as prescribed under Section 29A of the Arbitration and Conciliation Act and/or the grounds mentioned in Sections 13 and 14 of the Act.

33. The learned senior counsel appearing on behalf of SBPDCL further submitted that SBPDCL has filed a request case for appointment of an Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996. The SBPDCL terminated the agreement on 25.11.2017 and has raised arbitral dispute by serving a notice in accordance with Section 11 (3) read with Section 21 of the Act. The SBPDCL has appointed Mr. Justice V.N. Sinha, a former Judge of this Court as its nominee Arbitrator



and called upon the respondent no.1 SPML Infra Limited to nominate its Arbitrator so that two Arbitrators might appoint/nominate a third Arbitrator to constitute the Arbitral Tribunal in accordance with Section 10 of the Act. But, the SPML did not appoint the Arbitrator and they challenged the notice served on them by filing CWJC No.13672 of 2018. As the SPML did not appoint its Arbitrator within thirty days as provided under Section 11 (4) (a) of the Act, as such, SBPDCL has moved this Court for appointment of an Arbitrator on behalf of SPML which could not appoint an Arbitrator after expiry of period of 30 days. On this aspect, the learned senior counsel referred following two judgments of the Hon'ble Supreme Court:

(i) Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Anr. Reported in (2000) 8 SCC 151.

(ii) Punj Lloyed Ltd. Vs. Petronet MHB Ltd. reported in (2006) 2 SCC 638.

In terms of the aforesaid two judgments, two conditions are to be fulfilled and these conditions are:

(a) There must exist a valid arbitration agreement and from Clause 17.2, 17.2.5 and 17.2.6 of the Distribution Franchisee Agreement (DFA), there exists a valid arbitration agreement between the SBPDCL and SPML.

(b) There must exist an arbitrable dispute between the parties; the SBPDCL terminated the agreement due to breach of



the terms and conditions of the agreement by SPML and raised a dispute by serving a notice dated 11.06.2018.

For this reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***Zostel Hospitality (P) Ltd. v. Oravel Stays (P) Ltd., (2021) 9 SCC 765*** wherein in Para 9 it was held that, *"In view of the aforesaid, we are of the opinion that the respondents can raise the issue of arbitrability of the disputes before the arbitrator. Needless to say, our expression of the view that an arbitration clause exists and the arbitrator should be appointed, would not affect the suit filed by the respondents."*

34. The learned senior counsel appearing on behalf of SBPDCL further cited the following decisions of the Supreme Court (i) ***M/S S.B.P. & Co. Vs. M/S Patel Engineering Ltd. & Anr. (2005) 8 SCC 618*** and (ii) ***Vidya Drolia Vs. Durga Trading Corporation (2021) 2 SCC 1***, buttressing his submissions that this Court should appoint Arbitrator on behalf of SPML Infra Ltd. so that two Arbitrators of the parties could appoint a Presiding Arbitrator.

35. Thus, the learned senior counsel appearing on behalf of SBPDCL submitted that the judgment/order dated 25.09.2021 passed by the learned District Judge, Patna in Misc. (Arbitration) Case No. 01 of 2017 is against the relevant provisions of law as the learned District Judge failed to consider the contention raised



by the SBPDCL regarding extension of the mandate and absence of any arbitration agreement between the SBPDCL and BEDCPL for the reason that BEDCPL being an agent of SPML Infra Ltd. had no right to sue and nor can be sued in its own name where the principal is known in view of Section 230 of the Contract Act, 1872.

36. Further challenge has been made to the order dated 20.09.2021 of the learned District Judge whereby the Court dismissed the Arbitration Case Nos. 164/2017 as also 165/2017 by which SBPDCL has challenged the order dated 05.08.2017 passed by the learned Arbitral Tribunal rejecting the application of the SBPDCL being I.A. No. 07 of 2017. The said I.A. has been filed under Section 16 of the 1996 Act challenging, *inter alia*, the jurisdiction of learned Arbitral Tribunal.

37. The learned counsel for the SPML Infra Ltd. has submitted that the SPML has come before this Court by filing writ petition being CWJC No. 13762 of 2018 with a prayer for quashing the notice under Section 21 of the Arbitration and Conciliation Act, 1996 by which dispute has been raised against the SPML and for resolving the same by way of arbitration. The learned counsel further submitted that there is no arbitration clause/agreement between the SPML and SBPDCL in terms of Distribution Franchisee Agreement (DFA) dated 19.07.2013 and



clause 17.2 of DFA. The learned counsel further submitted that already an arbitration proceeding has been taking place between the SBPDCL and BEDCPL in terms of Distribution Franchisee Agreement and hence there cannot be second arbitration in relation to the same dispute arising out of the same agreement. The learned counsel further submitted that from the clause (e) of the DFA, it is evident that SPML has promoted and incorporated BEDCPL as a limited liability company, after it was declared successful bidder and floated BEDCPL as a special purpose vehicle (SPV) and it was in terms of Letters of Intent (LOI) and BEDCPL after entering into tripartite agreement became distribution franchisee in terms of the agreement entered into by the parties for execution of the Distribution Franchisee Agreement (DFA). Moreover, SBPDCL itself kept a proposal in its letter of intent that SPML could create a special purpose vehicle for execution of the work and accordingly, BEDCPL started working as Distribution Franchisee and it was accepted as such by SBPDCL when it entered into DFA wherein BEDCPL has been made second part. SPML was only a confirming party. At the same time, as per clause (G) of the DFA, SPML undertook that in the event of failure of compliance of the obligation under the DFA by the BEDCPL, all the obligations as per the Distribution Franchisee Agreement including the investment required in the franchisee area should automatically



become the responsibility of the SPML which further undertook to discharge all the obligations financially, commercially or otherwise of BEDCPL during the entire contract period. Thus, in terms of the agreement, it is not the SPML but BEDCPL which was to act as distribution franchisee and was to undertake to all obligations under the agreement and it was only on its failure to execute the same, the liability was to shift upon SPML. The learned counsel brought to the notice of the Court clauses 4.1, 5.5, 5.6.3, 5.6.4, 5.6.5, 14, 19.12 etc. to show that right of purchase and to distribute the electricity was that of distribution franchisee BEDCPL and not of SPML. Further Clause 17.2. of the agreement provides for amicable settlement of the dispute failing which the matter would be decided by the panel of three Arbitrators in terms of the provisions of Arbitration and Conciliation Act, 1996. The learned counsel further submitted that SBPDCL brought the issue of SPML being the party to arbitration before the learned Arbitral Tribunal by raising the same in Arbitration Case No. 106 of 2016 wherein it has been held that the said issue was to be decided at the time of the final adjudication, but the matter could not be finally adjudicated as the life of the Tribunal came to end when the SBPDCL refused to give its consent for extension of the time for publication of the Arbitral Award. The learned counsel further submitted that the issues regarding SPML being the party before



the Arbitral Tribunal and other issues like jurisdiction of the Tribunal and extension of the time of the Tribunal have been taken up by the SBPDCL before the learned Arbitral Tribunal and the learned District Judge and after the issue being decided against the SBPDCL, the same has been challenged before this Court. Once the issue has already been raised under the arbitration proceeding, the issuance of notice for fresh arbitration with the SPML in relation to the same dispute becomes wholly illegal and it appears to be taken only in order to avoid final adjudication by the Arbitral Tribunal.

38. The learned counsel for the SPML Infra Ltd. further submitted that once SBPDCL had submitted itself to the jurisdiction of the Arbitrator, it cannot turn around and say that it does not consider BEDCPL as the party to the arbitration agreement. Moreover, issue of impleading a party in an arbitration proceeding is to be considered by the Arbitral Tribunal itself and on this point, learned counsel relied on the Supreme Court decision in the case of *IVRCL Ltd. vs. Alkor Petroo Ltd.*, reported in **2016 SCC Online Guj 7809** (para 40 & 41).

39. The learned counsel on behalf of SPML further submitted that once the life of the Arbitral Tribunal has been extended by a competent court, the dispute has to be determined in the same arbitration proceeding and not separately. On the point



that the arbitration agreement cannot be invoked twice, the learned counsel relied on the following decisions:

(i) *SP Singla Constructions Pvt. Ltd. Vs. State of Himachal Pradesh*, reported in **2019 (1) PLJR SC 276** (Para 4, 13, 18, 21)

(ii) *Antrix Corporation Limited Vs. Devas Multimedia Pvt. Ltd.*, reported in **(2014) 11 SCC 560** (Para 1, 16, 24, 27, 31, 33 & 34)

(iii) *NHPC Ltd. Erstwhile Vs. M/S Hindustan Construction Company Ltd. & Ors.*, reported in **2015 SCC Online P & H 105** (Para 1, 8, 9, 10 & 14)

40. The learned counsel for the SPML Infra Ltd. further submitted that the language of Section 29A (4) of the Act is very much clear, which says “*If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator (s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period*”.

41. From bare reading of this section, it is clear that the Court can extend the period of the Arbitral Tribunal either prior to or after the expiry of the period so specified in sub-section (1) or the extended period under sub-section (3). If the mandate has been validly extended by a court of law, the arbitration proceeding has been in existence and SBPDCL cannot invoke arbitration agreement for the second time. The learned counsel further



submitted that a party which is aggrieved by the order of the Tribunal, not appeal-able under Section 37 of the Act, has to wait for passing of final award to raise the challenge under Section 34 of the Act. Dismissal of an application under Section 16 of the Act cannot be interfered with in exercise of jurisdiction under Article 227 of the Constitution and proper remedy against it to wait for passing the final award under Section 38 of the Act. On this aspect, the learned counsel relied on the decision of the Supreme Court in the case of ***Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another***, reported in ***(2020) 15 SCC 706*** (Para 12, 13, 22, 25).

42. The learned counsel for the SPML further relied on Section 4 of the Act on the point that a party who knows that any provision of Part 1 of the Act from which the parties may derogate, or any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without urging such objection to such non-compliance without undue delay or, if a time limit is provided for urging such objection, within that period of time, shall be deemed to have waived his right to so object. On this aspect, the learned counsel further relied on the decision of the Supreme Court in the case of ***Bharat Sanchar Nigam Limited and another Vs. Motorola India Private Limited***, reported in ***(2009) 2 SCC 337*** (Para 39).



43. The learned counsel for the SPML further submitted that once an Arbitrator was appointed in terms of the agreement, the provisions of sub-section 6 of Section 11 cannot be invoked again and the remedy of the aggrieved party is by way of petition under Section 13 and, thereafter, challenging the award under Section 34 of the Act. On this aspect, the learned counsel relied on the decision of the Supreme Court in the case of ***S.P. Singla Constructions Private Limited Vs. State of Himachal Pradesh and another***, reported in ***(2019) 2 SCC 488*** (Para 1, 4, 14, 18, 19, 20 & 21).

44. Thus, the learned counsel for the SPML submitted that BEDCPL being of a competent party to invoke the arbitration clause, invoked the same and SBPDCL submitted to the jurisdiction of the Arbitral Tribunal, participated in the arbitration proceeding, a valid arbitration proceeding came into existence and SPML is not a party to the arbitration proceeding in terms of arbitration clause of the DFA cannot ask to participate in the arbitration proceeding. It was wrong and incorrect on the part of the SBPDCL to send notice to SPML for appointment of an Arbitrator. The SBPDCL has also taken recourse to challenge the jurisdiction as well as raising different issues before the Arbitral Tribunal and the same have been rejected by the Tribunal. Moreover, it was under the competence of the Arbitral Tribunal to



decide all such issues and challenging the issues before this Court has been specifically prohibited and the issue has been settled by the Hon'ble Supreme Court in the decision as stated supra.

45. The learned counsel for the BEDCPL submitted that the BEDCPL has also moved before this Court by filing a Request Case No. 05 of 2022 for substitution of the Arbitrator who was nominated by SBPDCL since the learned Arbitrator has shown his unwillingness to proceed with the arbitral proceeding. The learned counsel further submitted that BEDCPL invoked the arbitration clause of the DFA when dispute arose. The SBPDCL also nominated its Arbitrator and two Arbitrators on behalf of the parties further nominated a Presiding Arbitrator. Now both the Arbitrators appointed on behalf of SBPDCL and the Presiding Arbitrator have shown their unwillingness to continue with the arbitration proceeding necessity as arising for appointment of Arbitrator on behalf of SBPDCL. The learned counsel further submitted that there is not merit in the submission made on behalf of SBPDCL that there is no arbitration agreement between SBPDCL and BEDCPL. The language of tripartite agreement is very much clear. From the facts of the case, it is clear that BEDCPL was floated as a wholly owned subsidiary by SPML and SBPDCL entered into the agreement considering all the facts. Initially SBPDCL was having no objection and it participated in



the arbitration proceedings once notice was served upon it by BEDCPL when it invoked arbitration clause of the DFA. So there was nothing wrong in the initiation of the arbitration proceeding namely, SBPDCL and BEDCPL. The issue whether SPML is a party or not, was raised before the Arbitral Tribunal and it opined that it would be decided at the time of passing of final award on the basis of material available on record. So the contention of SBPDCL that BEDCPL being an agent could not invoke arbitration clause is wrong and incorrect. Moreover, BEDCPL is wholly owned subsidiary of SPML and in this manner it has its separate existence. The conjoint reading of Letters of Intent and the Distribution Franchisee Agreement make the status of BEDCPL very much clear.

46. The learned counsel for the BEDCPL further submitted that once the right of BEDCPL is accepted to invoke the arbitration clause with SBPDCL, the issue regarding extension of the mandate of the Arbitral Tribunal could be easily settled in the light of the specific provision of Arbitration and Conciliation Act, 1996. The learned counsel further submitted that Section 29A (3) provides that the parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months. The learned Arbitral Tribunal extended its life by three months for passing the final award with consent of



the parties and when the award could not be delivered during the extended period, BEDCPL moved before the learned District Judge, Patna for extension of the time period and the same was extended by six months under the provisions of Section 29A (4) of the Act. Section 29A (4) provides that *“If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator (s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period”*. There could not be any infirmity in extension so granted by the learned District Judge. The learned counsel further submitted that it is the duty of the Court to interpret the legislation by liberally interpreting the statutes and from the plain reading of Section 29A (4), there could be no doubt that even after expiry of the period it was within the duty of the Court to extend the mandate. On liberal interpretation of the term used in the statutes, the learned counsel relied on the decision of the Hon’ble Supreme Court rendered in the case of ***Directorate of Enforcement Vs. Deepak Mahajan and Anr.***, reported in ***(1994) 3 SCC 440*** (Para 23, 24, 25, 26, 28, 29, 30, 101, 102).

47. The learned counsel for the BEDCPL further submitted that the word ‘*Extension*’ is even applicable to the cases where the period prescribed as expired and it is not limited to pre-



existence of things. Extension is permissible even after lapse of prescribed period. On this aspect, the learned counsel relied on the decisions in the case of ***Commissioner of Income Tax Vs. Ajanta Electricals, Punjab***, reported in ***(1995) 4 SCC 182*** (para 9, 10, 11 & 15). The learned counsel further relied on a decision of Hon'ble Supreme Court in the case of ***Tata Capital Financial Services Ltd. Vs. Siva Industries and Holding Ltd. & Anr.*** ***(MANU/SCOR/95271/2022)*** wherein the application was filed for extension of time for completion of arbitration proceeding after the expiry of the original period as the last date was 24.08.2022 and the petition for extension was filed on 26.08.2022. The Hon'ble Apex Court allowed the extension of the proceedings of the Arbitrator.

48. Thus, the learned counsel for the BEDCPL stressed the fact that no illegality was committed by the Arbitral Tribunal when it extended the mandate under Section 29A (3) of the Act and also when the learned District Judge extended the time period under Section 29A (4).

49. The learned counsel for the BEDCPL further submitted that since the arbitration agreement is still in existence and the Arbitrator appointed on behalf of BEDCPL is still continuing, there is no need to appoint Arbitrator on behalf of SPML. Rather the request case of SBPDCL for appointment of



Arbitrator on behalf of SBPDCL be considered and Arbitrator be appointed on behalf of SBPDCL.

50. The learned counsel for the BEDCPL further submitted that other issues raised by the SBPDCL should be raised before the Arbitral Tribunal itself which is a forum competent to decide the same and the SBPDCL has remedy to challenge the same under Section 34 of the Act after delivery of the final award.

51. In reply, learned senior counsel appearing on behalf of the SBPDCL submitted that the Request Case No. 05/2022 filed by BEDCPL is a fraudulent proceeding, that too, at a time when SPML had lost its right to nominate an arbitrator in spite of service of notice under Section 21 of the Arbitration and Conciliation Act 1996 within 30 days and have got filed Request Case No. 05/2022 through BEDCPL to get appointed/nominated a substitute arbitrator on behalf of SBPDCL knowingly that SBPDCL had already filed Request Case No. 147/2018 four years ago which could not be decided due to objection raised by SPML & BEDCPL. The learned senior counsel again reiterated that BEDCPL being an agent of the successful bidder SPML had no right to sue nor was party to the arbitration agreement which empowers only two parties, Distribution Licensee (SBPDCL) & Distribution Franchisee/Successful bidder (SPML), to nominate



arbitrators in terms of Clause 17.2.5 and 17.2.6 of DFA dated 19.07.2013.

52. The learned senior counsel appearing on behalf of the SBPDCL further submitted that the petition under section 11(6) of the Act for substitution of arbitrator is not maintainable because in accordance with section 29-A (5) of the Act it is the Principal Civil Court had the power. He further submitted that when the mandate of the erstwhile Tribunal had stood terminated on 13.05.2017 and even if after extension for 3 months on 20.05.2017 could not make out an award, now after more than 5 years 8 months it is meaningless to revive the dead proceeding; that too when an alternative remedy to resolve the dispute had already been initiated being Request Case no. 147/2018 preferred by a party to arbitration agreement. It is a matter of record that SPML, the real party and party to arbitration agreement, was/is not a party to the arbitration proceeding. The learned senior counsel has relied on the following decisions :

1. Shailesh Dhariyawan Vs. Mohan Bal Krishan Lulla, (2016) 3 SCC 619

II. Jayesh H. Pandaya & Anr. Vs. Subhtex India Ltd. & Ors., (2020) 17 SCC 383

The Hon'ble Supreme Court in the case of ***Shailesh Dhariyawan (supra)*** held that unless arbitration agreement categorically prohibits or debars resolution of dispute or difference



between parties by substitute arbitrator in case of death of named arbitrator or non-availability of said arbitrator, courts have power to appoint substitute arbitrator under Section 15 (2). Further principle of purposive construction while interpreting the document be resorted to and three basic rules must be followed : language, purpose and discretion. By interpretive process the Court is supposed to realize the goal that legal text is designed to realize. Similarly in the case of *Jayesh H. Pandaya (supra)*, the Hon'ble Supreme Court held that the essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. That apart, the doctrine of "waiver" or "deemed waiver" or "estoppel" is always based on facts and circumstances of each case, conduct of the parties in each case and as per the agreement entered into between the parties. Sub-section (2) of Section 14 clearly stipulates that if a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), the party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate and the appellants rightly applied to the



Court for termination of the mandate of the arbitrator pursuant to the provisions of this section and the Court was within its jurisdiction to decide accordingly.

53. The learned senior counsel appearing on behalf of the SBPDCL further submitted that earlier a dispute was raised by BEDCPL against SBPDCL, whereas the Request Case No. 147/2018 was filed for resolution of disputes which arose after 25.11.2017 when SBPDCL terminated the DFA as such the disputes arose on or after the said date between SBPDCL against SPML; the earlier proceeding was not between the same parties and so *S.P Singhla Case (Supra)* referred by the learned counsel opposing the prayer of SBPDCL to appoint an arbitrator is not applicable.

54. The learned senior counsel appearing on behalf of the SBPDCL further submitted that the order of the learned District Judge extending 6 months time proved futile and as on date there is no Arbitral proceeding pending between BEDCPL and SBPDCL. He further submitted that there is no provision to 'revive' a dead proceeding if, the parties are not in agreement, it is not a case of extension of the mandate of the Tribunal rather to revive by substituting arbitrator a dead proceeding which stood terminated 5 years 8 months earlier, in other words forcing the parties to have an arbitration agreement. He further submitted that



once this Court appoints an arbitrator on behalf of SPML, both SPML Infra and BEDCPL may raise all objections under Section 16 of the Act. It was reiterated that once the two conditions i.e. existence of valid arbitration agreement is proved and the other condition that there exists arbitrable disputes, in accordance with law settled a binding agreement for disputes to be resolved through arbitration is sine-qua-non for referring the parties to arbitration. The denial by and on behalf of SPML being not a party to arbitration agreement is malicious and false just to escape the liabilities as envisaged in Clause-G of DFA and as per other terms and conditions thereto this plea is being raised. It is well settled that the nomenclature of the parties to the agreement that too a commercial contract would not be a deciding factor rather it is the object which determines the Legality. The learned senior counsel had relied on the judgment of Hon'ble Apex Court in the case of:-

(i) Sasan Power Limited Vs. North American Coal Corporation, (2016) 10 SCC 813

(ii) Mahanagar Telephone Nigam Ltd. Vs Canara Bank, (2020) 12 SCC 767

55. The learned senior counsel for SBPDCL further submitted that in effect this writ application being CWJC No. 20350/2021 had become infructuous. So, far M.A 635/2021 and 638/2021 are concerned it is submitted that the learned District Judge did not consider the issues raised by the appellants



(SBPDCL) and only on the ground that the Court had extended the period of 6 months time for passing the award and dismissed the two petitions being Arbitration Case No.164 & 165/2017 by which the SBPDCL had challenged the order passed by the then Arbitral tribunal rejecting the two Interlocutory Applications being I.A No. 7 & 10/2017 by which the appellant had raised questions as to the very right of BEDCPL to initiate the arbitration proceeding and to continue the same, in other words very right to sue and by second I.A had challenged the very authority of the Arbitral Tribunal to extend the mandate of the arbitral tribunal by oral consent vide order dated 20.05.2017 although in accordance with section 29-A (4) the mandate of the arbitrator had stood terminated on 13.05.2017 itself but the learned District Judge did not consider these pure questions of law and dismissed the same and as such the appeals filed by the appellant-SBPDCL are fit to be allowed and the order passed by the learned District Judge dated 20.05.2021 affirming the order of the Tribunal 05.08.2017 are fit to be quashed and cancelled with cost.

56. The foremost issue which arises for consideration is as to whether the claim of the SBPDCL is correct that only the SPML is a party to the arbitration agreement and BEDCPL is only an agent and hence in stead of BEDCPL, it is SPML which should be



the party in the arbitration proceedings before the Arbitral Tribunal.

57. It is made clear that we are most disinclined to decide this issue since time and again it has been held by the Hon'ble Apex Court that such type of issue be left to be decided by the Arbitrators and if there is an arbitration clause, it is not the business of the courts to enter into such disputed issues. Reliance could be placed on the Apex Court decision in the case of ***IVRCL Limited Vs. Alkor Petroo Limited & Anr.***, reported in ***2016 SCC OnLine Guj 7809*** (Para 40 & 41).

58. But the same is true for ideal situation. The history of the cases before us is quite chequered. The request for proposal was initiated on 22.10.2012 and DFA was signed on 19.07.2013. The dispute was raised by the BEDCPL and arbitration proceedings continued before the Arbitral Tribunal till 13.05.2017. Thereafter, the cases were filed before the learned District Judge, Patna, which was decided on 25.09.2021. For SBPDCL, cause of action arose after initiation of arbitration proceedings on behalf of BEDCPL and such action has not been challenged. Thereafter, the matter travelled to this Court and we are in the year 2023. So to give a quietus to the dispute on this issue, we think this Court would look into the issue and decide the same since leaving it to be decided by the Arbitral Tribunal would only result in wastage of



valuable time and resources. Then the Hon'ble Supreme Court in the case of *Chloro Controls India (P) Ltd. vs. Severn Trent Water Purification Inc*, reported in (2013) 1 SCC 641 has held that if need be so arise, or non-signatories to the Arbitration agreement could also be made party to the arbitral proceeding.

59. The submissions made on behalf of the parties have mostly for or against the contentions of SBPDCL to make SPML only the party in the arbitral proceedings.

60. Let us revisit the facts to come to any conclusion on this issue. It is undisputed that pursuant to request for proposal of appointment of distribution franchisee by BSEB later on replaced by SBPDCL, SPML was the successful bidder. Letter of Intent was issued by the SBPDCL and the same was accepted by SPML. In terms of proposal in the letter of intent, SPML floated its 100 % subsidiary (Special Purpose Vehicle) in the form of BEDCPL and thereafter, DFA was signed by three parties, namely, SBPDCL, BEDCPL and SPML as first part, second part and third part, respectively. Relevant portion of the agreement is extracted below for reference :

“South Bihar Power Distribution Company Limited, a company registered under the Companies Act, 1956 having its registered office at Vidyut Bhawan, Bailey Road, Patna-800021, Bihar India hereinafter referred to as “SBPDCL” (which expression



unless repugnant to the context or meaning thereof shall include its successors and assigns) of the FIRST PART.

And

M/S Bhagalpur Electricity Distribution Company Private Limited (BEDCPL), Kolkata a company incorporated by the Successful Bidder (i.e. M/s SPML Infra Limited) under the provisions of the Companies Act, 1956 and having its Registered Office at 22, Abanindra Nath Thakur Sarani, Block A, 3rd Floor, Kolkata-700016, West Bengal, (hereinafter referred to as the “Distribution Franchisee” which expression shall unless repugnant to the context of meaning thereof, include its successors and permitted assigns and substitutes), represented herein through Mr. Amanuillah Md.Azmat Ali, the authorized signatory, as authorized vide Board resolution dated 15th July, 2013, of the SECOND PART.

And

M/s SPML, Infra Limited, Kolkata having its Registered Office at 22, Camac Street, Block-A, 3rd Floor, Kolkata-700016, West Bengal, in its capacity as the confirming party to this Agreement (hereinafter referred to as the “Successful Bidder” which expression shall, unless the context otherwise requires, include its successors)



represented herein through Mr. Abhinandan Sethi, the authorized signatory, as authorized vide Board resolution dated 27th May, 2013, of the THIRD PART.

Each of the parties of the First, Second and Third parts are hereinafter, as the context may admit or require, individually referred to as a “Party” and collectively as the “Parties”.

WHEREAS :

A. South Bihar Power Distribution Company Limited is a Distribution Licensee under the provisions of the Electricity Act, 2003 (the “Act”) having license to supply electricity coming under four (4) Electric Supply Areas i.e. PESU, Central Electric Supply Area (CESA), Magadh Electric Supply Area (MESA) & Bhagalpur Electric Supply Area (BESA) in the State of Bihar.

B. Under the provisions of the Act, SBPDCL is entitled to distribute electricity in a specified area within its area of supply through another person referred to as Franchisee.

C. For the purpose of sale and supply of electricity in the Bhagalpur town and adjoining areas consisting of Electric Supply division Bhagalpur (U), Electric Supply Sub-Division kahalgaon and Electric Supply Sub-Division Aligunj of SBPDCL as more particularly described hereinafter,



SBPDCL selected M/s SPML Infra Limited, Kolkata through the competitive bidding process.

D. SBPDCL issued a Letter of Intent No 02/Com/DF-27/013 dated 21.03.2013 to the said M/s SPML Infra Limited, Kolkata and the same had been accepted by M/s SPML Infra Limited, Kolkata vide letter No. SPML/Booo/Booo/H7/181/Q-309/176 dated 05.04.2013.

E. The Successful bidder has since promoted and incorporated the Distribution Franchisee as a limited liability company under the Companies Act 1956, and has requested the SBPDCL to accept the Distribution Franchisee as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder under the LOI including the obligation to enter into this Distribution Franchisee Agreement pursuant to the LOI for executing the Project.

F. The parties are fully aware that this Agreement is for sale and purchase of electricity for distribution in Franchisee Area through the Distribution Franchisee as contemplated under the Electricity Act 2003.

G. M/s SPML Infra Limited, Kolkata undertakes that in the event of failure of compliance of obligation under the Distribution Franchisee Agreement by M/s



Bhagalpur Electricity Distribution Company Private Limited, Kolkata, all the obligation as per the Distribution Franchisee Agreement including the investment required in the Franchisee Area shall automatically become the responsibility of the M/s SPML Infra Limited, Kolkata who undertakes to discharge all the obligations-financial, commercial or otherwise of M/s Bhagalpur Electricity Distribution Company Limited, Kolkata during the entire contract period.

61. It is pertinent to mention here that SPML has been stated to be a confirming party to this agreement, though it has been mentioned as Third Part of the agreement. At the same time, it has been specifically mentioned that each of the party of the first, second and third parts would individually be referred as a “Party” and collectively as the “Parties” as the context might require. Subsequent paragraph ‘E’ is important which reads as under :

“E. The Successful Bidder has since promoted and incorporated the Distribution Franchisee as a limited liability company under the Companies Act 1956 and has requested the SBPDCL to accept he Distribution Franchisee as the entity which shall undertake and perform the obligations and exercise the rights of the Successful



Bidder under the LOI including the obligation to enter into the Distribution Franchisee Agreement pursuant to the LOI for executing the Project”.

62. The aforesaid paragraph further makes it clear that BEDCPL has been promoted and incorporated by SPML as a Distribution Franchisee as a limited liability company for undertaking and performing the obligations and exercise the rights of the successful bidder, viz, SPML under the letter of intent.

On the other hand, Clause G (quoted supra) of this agreement enjoins SPML to step into the shoes of BEDCPL in the event of its failure of compliance of obligation under the Distribution Franchisee Agreement.

63. Bare plain reading of the starting portion of the Distribution Franchisee Agreement shows that SPML was the successful bidder and it floated 100 % subsidiary in the form of BEDCPL and tripartite agreement was entered into by the aforementioned three parties.

64. From the aforesaid contents of the agreement, there is no doubt about SPML being a party to the Distribution Franchisee Agreement. But whether SPML could be said to be a party to the arbitration agreement?

65. In this regard, Clause 17.2 has already been quoted hereinabove. The striking fact which comes out from the reading of



this clause is that though it is tripartite agreement, it only talks about two parties. Thus, there appears ambiguity as to whether the language has been used to exclude SPML from the ambit of dispute resolution mechanism. Clause 17.2 talks about 'either party', 'both the parties' and 'parties', but in our opinion, there is no ambiguity at all. When SBPDCL (distribution licensee) has been taken to be the first party, naturally BEDCPL and SPML would be considered to be the other party to the dispute if any dispute so arise. So this language might have been deliberately used so that any of the parties could ask for arbitration in case of non-settlement of dispute by the permanent dispute resolution body. The status of BEDCPL is very much clear. It is a 100% own subsidiary of SPML which was the successful bidder and in case of failure of BEDCPL to meet its obligations, SPML has undertaken to discharge on its liabilities.

66. The contention of SPML or BEDCPL that SPML should not be considered as a part of arbitration agreement, in our opinion, is erroneous for the reason that if SPML has undertaken to cover up the liabilities of BEDCPL in ultimate case of its failure to meet its obligations and situation having arisen so as to working of the agreement unsustainable. SPML would be a natural party in order to avoid future litigation. Let us take a hypothetical situation. If arbitration would have proceeded normally between SBPDCL and BEDCPL and the same be ending into accepting the claims of



SBDPCL and the liability could not be met by the BEDCPL, naturally the SPML would be required to discharge its liability as per the agreement. What is wrong if SPML is asked to join the proceeding from the very beginning so that it could safeguard its interest and the litigation is not prolonged on the ground of technicalities, if any, taken by SPML after any award is passed against BEDCPL.

67. If an agent can sue on its own name and maintain the action in a case brought by it, it does not foreclose the option of the other party to implead its principal and bring an action against it or to sue the principal.

68. Moreover, when there is express contract between the parties which leaves no doubt in the minds of this Court that SPML has been a party to the litigation. Thus, we decide and hold that SPML is a party to the contract entered into the parties by acceptance of letters of intent pursuant to request for proposal and SPML being declared successful bidder and even in terms of Clause 17 of the Distribution Franchisee Agreement though it has not been specifically mentioned as a party to the same but for all intent and purpose, the effect is the same and SPML ought to be a party to the arbitration agreement.

69. It has been contended on behalf of the SPML that the issue of SPML being a party to the arbitral proceedings has already



been raised under the arbitration proceeding and raising the same issue before this Court is wrong and incorrect. Once this issue has been taken before the Arbitral Tribunal, the SBPDCL should have waited for final adjudication by the Arbitral Tribunal, but we are afraid this contention should have any force after passage of so much time when there is no Arbitral Tribunal in existence and the parties are before this Court for appointment of Arbitrators/ substitution of principal and one member arbitrators.

70. Another contention which was taken by the SPML was that after invoking of the arbitration clause 10, BEDCPL and SBPDCL proceeded with the arbitration, it has waived its right to object under the provisions of Section 4 of the Arbitration and Conciliation Act, 1996. But we do not think there is any merit in the submission made on behalf SPML on this point. Section 4 reads as follows :

“4. Waiver of right to object.—A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that



objection, within that period of time, shall be deemed to have waived his right to so object”.

71. From perusal of the provision of Section 4 of the Act, it is amply clear that waiver would be considered only if the party proceeds with the arbitration without stating his objection. The same is not the case here. SBPDCL has raised objection and asked for SPML being made a party and the learned Arbitral Tribunal decided to adjudicate upon this matter at the time of final award. So, this contention of SPML is also without any force. In the light of Apex Court decision in the case of **Chloro Controls India (P) Ltd.** (cited supra), the principle is that even non-signatories to the Arbitration agreement could also be made party to the arbitral proceedings if the circumstances demonstrate it was the mutual intention of the respective parties. Therefore, the contentions of BEDCPL and SPML are to be rejected.

72. The second issue which has been the subject matter of intense litigation is whether the extension of period of Arbitral Tribunal by the Court of learned District Judge was in accordance with law or whether its continuation was erroneous and its mandate stood terminated?

73. Section 29A provides for time limit for arbitral award and extension of mandate of Arbitrator. The whole of this Section reads as under :



“29A. Time limit for arbitral award.--(1) The award in matters other than international arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

Provides that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period: Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of arbitrator shall continue till the disposal of the said application.



Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in subsection (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

74. In the instant case, as the award was not made within the period of twelve months from the date the arbitral tribunal entered into the reference, under Section 29A (3), the parties by consent extended the period for six months and the same was recorded by the learned Arbitral Tribunal on 20.05.2017. Though



it has been contended on behalf of the SBPDCL that it has not given any written consent for the same and was not agreeable for extension of the Arbitral Tribunal, the same was recorded erroneously. It has been contended on behalf of SBPDCL that as the mandate of the Arbitral Tribunal expired on 13.05.2017 after its constitution on 14.05.2016, even the subsequent extension for three months purportedly on oral consent on 20.05.2017 was wrong since the mandate already stood terminated and it was not extended with retrospective effect.

75. Another point raised by the SBPDCL was that even if the first extension by oral consent of the parties is taken to be valid, it came to an end on 19.08.2017. Evidently, BEDCPL approached the court of learned District Judge, Patna after termination of mandate and once the mandate of the Arbitral Tribunal has come to an end, it could not be extended and what the learned District Judge did/was to revive the mandate and life of the Arbitral Tribunal.

76. On the other hand, contention of the SPML and BEDCPL has all along been that the court can extend the period of Arbitral Tribunal either prior to or after the expiry of the period so specified in Sub-section (1) or the extended period under Sub-section (3). This is clear mandate of Sub-section (4) of Section 29 A.



77. Prior to consideration on the aforesaid issue, this Court would like to consider the legality of the extension said to be accorded by the parties on oral consent by which the period of arbitral tribunal was extended for three months vide order dated 20.05.2017 passed by the arbitral tribunal. Perusal of the order dated 20.05.2017 with regard to extension of the proceeding shows it is worded in the following manner :

“At the request of the parties, for the present, the arbitral proceeding is extended by three (3) months”.

78. There is no mentioning of the fact that it has been extended from the date the period of 12 months as contemplated under Section 29 A (1) has ended. There is no dispute that the said period ended on 13.05.2017 and parties were competent to extend the period for upto six months. But effectively there was no proceeding in existence when the matter of extension of arbitral proceeding was taken up. The parties could be stated to have agreed to the proposition for extension of the arbitral proceeding had it been recorded that the same was being extended with retrospective effect. But the same is not the case here. What would otherwise have been a normal extension has run into rough weather due to casual wordings of extension. However, this Court would not like to leave the matter as such.



79. First issue which comes into mind is as to whether once the mandate of the Arbitral Tribunal has expired, the court can be justified in extending the same. We are of the view that submissions made on behalf of SPML or BEDCPL are misconceived. What Sub-section (4) talks about is the power of the court to extend the mandate of the Arbitrator (s) i.e. the said order could be passed during the existence of the mandate or after the expiry of the period so specified which means 12 months plus the period of extended time as per Section 29A (3) of the Act and not at the point of time when the mandate has already stood terminated even after grant of extension. As per Mitra's Legal and Commercial Dictionary, 6th Edition, the terms 'extend' means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Similarly, the word 'extension' has been stated to be an increase in length of time. This implies the word extension ordinarily meaning the existence of something to be extended and its term for the purpose of enlarging or giving further duration to any existing right, but does not import right. Similarly, the definition of the word 'extension' in Chambers 21st Century Dictionary is 'The process of extending something, or the state or being extended; an added part, that makes the original larger or longer; an extra period beyond an original time limit'. If the mandate has already



terminated and it has expired for the Arbitral Tribunal if the legislature so intended. It would have used the term revival or renewal and not the word extension which presupposed existence of something. On this aspect, we find some force in the submission made on behalf of the SBPDCL.

80. However, we are concerned with larger issue in this case which goes into the root of the matter. It is whether court of learned District Judge was competent to entertain the petitioner for extension of Arbitral Tribunal. Coming back again to Section 29A (4) of the Act which talks about power of the court to extend the mandate of the Arbitrators. At the same time, Section 29A (6) provides that while extending the period referred in subsection (4) it shall be open to the court to substitute one or all the Arbitrators.

81. Before considering the matter further, it would be appropriate to consider different provisions of Act. Section 2 of the Act defines the term 'Court'. Section 2 (1) (e) reads thus :

In this Part, unless the context otherwise requires,-

“(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the



subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court”.

82. This definition of the word ‘Court’ is preceded by the term, ‘in this Part, unless the context otherwise requires’ which bears in ordinary sense in case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction is a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. But we are more concerned with the process of appointment of arbitrators and their substitution as it would be seen that the definition of Court under Section 2 (e) has no relevance with regard to appointment and substitution of arbitrator.

83. Section 11 of the Act provides for appointment of Arbitrators, which reads as under :

“11 Appointment of arbitrators. —

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.



(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitration other than international commercial arbitration, as the case may be.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).

(6) Where, under an appointment procedure agreed upon by the parties,—



(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitration other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

*(7) ****

(8) The arbitral institution referred to in sub-section (4), (5) and (6), before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to--

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.



(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the arbitral institution designated by the Supreme Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

*(10) ****

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been made first made under the relevant sub-section shall be competent to appoint”.

84. Prior to amendment in 2019, Section 11 (4) of the Act
read as under :-

(4) If the appointment procedure in sub-section (3) applies and—
(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court.



85. Thus, Sub-section (4) of Section 11 provides that if a party fails to appoint an arbitrator within thirty days from the date of receipt of a request to do so from the other party or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Supreme Court or as the case may be, the High Court or any person or institution designated by such court. In the case at hand, the Arbitral Tribunal was constituted on appointment of Arbitrators being made by the parties and thereafter the appointed Arbitrators nominated the Presiding Arbitrator. But the question arises whether the learned District Judge was correct in his approach in extending the time of learned Arbitral Tribunal? No doubt Section 29A (4) provides that extension of mandate of appointment of Arbitrator (s) by the court either prior or after the expiry of the period so specified.

86. Now, a piquant situation arises. If the power to appoint Arbitrator has been vested with High Court and Supreme Court under Section 11 (4) of the Act, legislature would never intended its substitution under Section 29 A (6) by the court of principal civil judge as it appears from the plain reading of Section 2(e)(i). But the meaning of Court for the purpose of Section 29A would



be different from what it is under Section 34 and Section 37 of the Act.

87. In the present case, though the Arbitrator was appointed by the parties themselves, but in case of any dispute they would otherwise have been appointed by the High Court or the Supreme Court as the case may be and taking cue from this provision under Section 11 (4), 11 (5) and 11 (6) of the Act, we can say that if the Principal Civil Court cannot substitute the Arbitrators, by corollary, it cannot extend the period of Arbitrator(s) under Section 29A (4). Otherwise it would give rise to conflict between the power of the High Court as well as the Supreme Court to appoint Arbitrators under Section 11 of the Act and those of the principal civil courts to substitute them under Section 29 (A) (6). Moreover initially when SBPDCL failed to appoint Arbitrator, BEDCPL approached this Court by filing Request Case No.06 of 2016 and during pendency of the aforementioned case, SBPDCL appointed its Arbitrator.

88. On similar issue, a matter came up before the High Court of Gujarat in *Misc. Civil Application (0J) No.1 of 2018 In R/Petn. Under Arbitration Act No.56 of 2016 (Bhanubhai Ramanbhai Patel vs. Nilesh Ramanbhai Patel)*. Paragraph 15 of the aforesaid decision is quite explicit.

“15. This provision thus make a few things clear.



Firstly, the power to extend the mandate of an arbitrator under sub-section (4) of Section 29A beyond the period of twelve months or such further period it may have C/IAAP/56/2016 IA ORDER been extended in terms of sub-section (3) of Section 29A rests with the Court. Neither the arbitrator nor parties even by joint consent can extend such period. The Court on the other hand has vast powers for extension of the period even after such period is over. While doing so the Court could also choose to substitute one or all of the arbitrators and this is where the definition of term 'Court' contained in Section 2(1)(e) does not fit. It is inconceivable that the legislature would vest the power in the Principal Civil Judge to substitute an arbitrator who may have been appointed by the High Court or Supreme Court. Even otherwise, it would be wholly impermissible since the powers for appointment of an arbitrator when the situation so arises, vest in the High Court or the Supreme Court as the case may be in terms of sub-section (4), (5) and (6) of Section 11 of the Act. If therefore there is a case for extension of the term of an arbitrator who has been appointed by the High Court or Supreme Court and if the contention of Shri Mehta that such an application would lie only before the Principal Civil Court is upheld, powers under sub-section (6) of Section 29A would be non-



operatable. In such a situation sub-section (6) of Section 29A C/IAAP/56/2016 IA ORDER would be rendered otiose. The powers under sub-section (6) of Section 29A are of considerable significance. The powers for extending the mandate of an arbitrator are coupled with the power to substitute an arbitrator. These powers of substitution of an arbitrator are thus concomitant to the principal powers for granting an extension. If for valid reasons the Court finds that it is a fit case for extending the mandate of the arbitrator but that by itself may not be sufficient to bring about an early end to the arbitral proceedings, the Court may also consider substituting the existing arbitrator. It would be wholly incumbent to hold that under sub-section (6) of Section 29A the legislature has vested powers in the Civil Court to make appointment of arbitrators by substituting an arbitrator or the whole panel of arbitrators appointed by the High Court under Section 11 of the Act. If we therefore accept this contention of Shri Mehta, it would lead to irreconcilable conflict between the power of the superior Courts to appoint arbitrators under section 11 of the Act and those of the Civil Court to substitute such arbitrators under Section 29A(6). This conflict can be avoided only by understanding the term "court" for the C/IAAP/56/2016 IA



ORDER purpose of Section 29A as the Court which appointed the arbitrator in case of Court constituted arbitral Tribunal”.

89. On similar lines is the decision of the High Court of Bombay is a ***Cabra Instalaciones Y. Servicios Vs. Maharashtra State Electricity Distribution Company Limited, Commercial Arbitration Petition (L) No.814 of 2019, (2019 SCC OnLine Bom 1437)***. Paragraph 7 reads thus:

“7. On a plain reading of Section 29A alongwith its sub-sections, it can be seen that for seeking extension of the mandate of an arbitral tribunal, these are substantive powers which are conferred on the Court and more particularly in view of the clear provisions of sub-section (6) which provides that while extending the period referred to in sub-section (4), it would be open to the Court to substitute one or all the arbitrators, which is in fact a power to make appointment of a new/substitute arbitrator or any member of the arbitral tribunal. Thus certainly when the arbitration in question is an international commercial arbitration as defined under Section 2(1)(f) of the Act, the High Court exercising power under Section 29A, cannot make an appointment of a substitute arbitral tribunal or any member of the arbitral tribunal as prescribed under sub-section (6) of Section 29-A, as it would be the exclusive



power and jurisdiction of the Supreme Court considering the provisions of Section 11(5) read with Section 11(9) as also Sections 14 and 15 of the Act. It also cannot be overlooked that in a given case there is likelihood of an opposition to an extension application and the opposing party may pray for appointment of a substitute arbitral tribunal, requiring the Court to exercise powers under sub-section (6) of Section 29-A. In such a situation while appointing a substitute arbitral tribunal, when the arbitration is an international commercial arbitration, Section 11(9) would certainly come into play, which confers exclusive jurisdiction on the Supreme Court to appoint an arbitral tribunal”.

90. The decision of Allahabad High Court in the case of ***Indian Farmers Fertilizers Cooperative Ltd. V. Manish Engineering Enterprises***, reported in ***AIR Online 2022 All 15*** is also on the same issue. Relevant paragraphs 34 to 36 read thus :

“34. Thus, the power to substitute the arbitrator as mandated in sub-section (6) of Section 29A vest only with the Court. This provision cannot be read in isolation but with Section 11, which provides for appointment of arbitrator.

35. Once the appointment of arbitrator or arbitral Tribunal has been made by the High



Court or the Supreme Court exercising power under sub-sections (4), (5) and (6) of Section 11 then the power to substitute the arbitrator or the Arbitral Tribunal only vest with the said appointing authority i.e. High Court or Supreme Court, as the case may be.

36. The argument raised from the side opposite that the word “Court’ occurring in Section 2(1)(e) means the principal Civil Court and not the High Court cannot be accepted, as once the appointment was made by the High Court exercising power under Section 11, the power to substitute an arbitrator cannot vest under sub-section (6) of Section 29A with the principal Civil Court”.

91. Thus, the cumulative reading of Section 2 (e), Section 11 (4) (5) (6) and Section 29 A (4) and (6) of the Act makes it crystal clear that the court which could grant extension of time could only be the court which has the power to appoint the Arbitrators and not the Principal Civil Court which is the court for other purpose under the Act. Otherwise, the conflict between the power of the superior courts to appoint Arbitrators under Section 11 of the Act and powers of the Principal Civil Court to substitute such Arbitrators under Section 29 A (6) of the Act could not be reconciled. So, we find and hold that the learned



District Judge erred while granting the extension of time to the learned Arbitral Tribunal.

92. A question may arise for consideration in the present case as the Arbitrators were not appointed by the High Court and were appointed by the parties themselves during pendency of Request Case No.06 of 2016 filed on behalf of BEDCPL for appointment of Arbitrator on behalf of SBPDCL, there ought not to be any issue for their extension or for that matter substitution under Section 29 (4) (6) of the Act. But in that case, the proceedings on this assumption that the Principal Civil Court got jurisdiction as the Arbitrators were appointed by the parties themselves would again give rise to conflicting situation. Let us take example of a situation where one of the Arbitrators has been appointed by the one of the parties and the second Arbitrator by the High Court and for substitution of either of them there could not be jurisdiction conferred upon both the principal civil court as well as on the High Court. So, to avoid such difference and conflicting cases in future it is more necessary to clear this aspect that the Principal Civil Court (the court of learned District Judge in the present case) has no jurisdiction to entertain the applications for extension of mandate of Arbitral Tribunal.

93. So we come to a conclusion on this point that the extension of term of the arbitral tribunal by the learned District



Judge was without authority of law on jurisdiction and the same came to an end after its first extension on consent of the parties. If it is presumed that the same was with retrospective effect since the extension has been recorded after the expiry of the 12 months of the period.

94. Moreover, the view taken hereinabove is also fortified by the conduct of the parties. BEDCPL filed its petition for substitution of Arbitrators before this Court under Section 29 A (6) of the Act, whereas SBPDCL filed its petition for appointment of fresh Arbitrators while making SPML party to such arbitration proceeding. So the parties have no doubt in their minds that if substitution is to be done, the jurisdiction lies with this Court and not the court of learned District Judge, otherwise, they would have moved before the learned District Judge for substitution. Obviously the inference is that only the court which has got power to substitute the Arbitrators should be moved for extension of time for arbitral proceedings.

95. Once we have held that there exists no arbitration proceedings as on date, there could be no arbitral tribunal in existence as on date since its term came to expiry in terms of Section 29 A (1) and even after subsequent extension under Section 29 A (3). So, this Court is required to consider the issue of appointment of Arbitrators afresh.



96. Now let us take up the question of continuation and substitution of Arbitrators as prayed by the parties. The stand of SPML is very clear. It has contended from the very beginning that it is not a party to the arbitration agreement which did not find favour with this Court as discussed in earlier paragraphs. Once we have come to a conclusion that SPML is a necessary party to the arbitration agreement though this issue was left open by the learned arbitral tribunal as reflected from its order dated 05.08.2017. The natural consequence would be that it be asked to join the arbitration proceedings and appoint an Arbitrator on its behalf. It is again reiterated even at the cost of repetition that SPML and BEDCPL could not be treated as different from each other on conjoint reading of different documents, viz, RFP, LOI, DFA and specially the arbitration clause of DFA. So, we hold that Arbitrator needs to be appointed on behalf of SPML and BEDCPL.

97. SBPDCL has submitted before this Court that it has nominated Hon'ble Mr. Justice V.N.Sinha (since retired) to be its nominee Arbitrator. The contention of BEDCPL is that arbitration proceedings are still subsisting and its nominee Arbitrator, Hon'ble Mr. Justice Pravir Kumar Samanta (since retired) is continuing. Once we have held that arbitration proceeding has come to an end and Arbitrators are to be



appointed afresh. In circumstances other than the present one, this Court might have asked the parties to nominate their Arbitrators. But considering the fact that the dispute in the matter has been lingering on for almost 7 to 8 years, this Court would suggest the panel of Arbitrators on behalf of the parties to choose, who in turn will nominate the Presiding Arbitrator. It is made clear that one Arbitrator is to be chosen by SBPDCL and another by SPML and BEDCPL jointly. This exercise would be completed by the parties within two weeks from the date of receipt of a copy of this judgment.

98. The arbitral proceedings are being ordered to be started afresh and it is not an extension within the meaning of Section 29A (6) of the Act. The arbitral tribunal shall follow the timeline as prescribed in Section 29 A. Ordering for fresh arbitration in the matter has become more necessary as the SPML has not been a party to the earlier arbitration proceeding and it has been ordered to be treated as a party in the present case. So it is incumbent upon this Court to see that SPML is not prejudiced in any manner. Moreover, considering the history of dispute, it would be proper and in the interest of justice that the parties start the arbitral proceeding on a clean slate. This Court suggests the panel of following Arbitrators to be chosen from by the parties.



1. Hon'ble Mr. Justice Jayanandan Singh, Former Judge, Patna High Court, Patna
2. Hon'ble Mr. Justice Vijayeshwar Narayan Sinha, Former Judge, Patna High Court, Patna
3. Hon'ble Mr. Justice Mihir Kumar Jha, Former Judge, Patna High Court, Patna
4. Hon'ble Mr. Justice Ramesh Kumar Datta, Former Judge, Patna High Court, Patna
5. Hon'ble Mr. Justice Samarendra Pratap Singh, Former Judge, Patna High Court, Patna
6. Hon'ble Mr. Justice Jitendra Mohan Sharma, Former Judge, Patna High Court, Patna
7. Hon'ble Justice Smt. Nilu Agrawal, Former Judge, Patna High Court, Patna
8. Hon'ble Mr. Justice Jyoti Saran, Former Judge, Patna High Court, Patna
9. Hon'ble Mr. Justice Dinesh Kumar Singh, Former Judge, Patna High Court, Patna
10. Hon'ble Mr. Justice Prabhat Kumar Jha, Former Judge, Patna High Court, Patna
11. Hon'ble Mr. Justice Ashwani Kumar Singh, Former Judge, Patna High Court, Patna.

99. In view of discussions made so far, we have no hesitation in holding that the arbitral tribunal which started working with effect from 14.05.2016 has ceased to exist and for this reason, it cannot be continued even after substituting Arbitrator on behalf of any of the parties what to say on behalf of SBPDCL.



100. In the light of the discussions made in paragraphs hereinbefore, the order dated 25.09.2021 passed by the learned District Judge in Misc. Arbitration Case No.01 of 2017 wherein the learned District Judge allowed the extension of time for completion of arbitration proceeding and the mandate of the Arbitrators is set aside. Similarly, the order dated 25.09.2021 passed by the learned District Judge in Misc. Arbitration Case No. 164 of 2017 is also set aside. The order dated 25.09.2021 passed by learned District Judge in Misc. Arbitration Case No.165 of 2017 wherein it upheld the extension of the arbitral tribunal by consent of the parties is also set aside.

101. Accordingly, CWJC No.20350 of 2021, M.A. No.635 of 2021, M.A. No.638 of 2021 are allowed to the extent indicated above and rest of the cases are disposed of. Parties to bear their own cost.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

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