

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Commercial Appellate Jurisdiction)

Commercial Appeal No. 10 of 2023

1. East Central Railway, through Chief Administrative Officer (Construction) East Central Railway, Mahendru Ghat, P.O. & P.S. Mahendru Ghat, Patna, Bihar.
2. The Financial Advisor & Chief Accounts Officer (Construction) East Central Railway, Mahendru Ghat, P.O. & P.S. Mahendru Ghat, Patna, Bihar.
3. The Chief Engineer (Construction), (South) East Central Railway, Barkakana, P.O. & P.S. Barkakana, Ramgarh, Jharkhand.
4. The Deputy Chief Engineer (Construction) East Central Railway, Barkakana, P.O. & P.S. Barkakana, Ramgarh, Jharkhand.

Appellants represented through its duly authorized signatory, namely, Anil Kumar Singh, (age about 52 years) s/o Sri Ramchandra Singh, posted as Executive Engineer (Construction), East Central Railway, Barkakana, P.O. & P.S. Barkakana, Ramgarh, Jharkhand

..... Respondents/Petitioners/Appellants

-VERSUS-

M/s Pratibha Royal (JV), a Joint Venture Company having its office at 18 R.N. Mukherjee Road, 6th Floor, P.O. & P.S. R.N. Mukherjee Road, Kolkatta-700001 represented through its authorized signatory namely, Dhanajay s/o late Kamdeo Sharma, resident of Plot no. C-69, Police Colony, Anisabad, P.O. & P.S. Gardanibagh, District-Patna.

.....Clamant/Opposite Party/Respondent

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants:	Mr. Anil Kumar, Addl. S.G.I. Mr. Abhijeet Kumar Singh, C.G.C.
For the Respondent:	Mr. Vikas Pandey, Advocate Mr. Sanjay Kumar Prasad, Advocate Mr. Deepak Kumar Sinha, Advocate

3rd January 2024

Per, Shree Chandrashekhar, A.C.J.

I.A. No. 4832 of 2023

The appellants have filed this Interlocutory Application under Section 5 of the Limitation Act seeking condonation of delay of 663 days in filing the present Commercial Appeal.

2. Having regard to the contentious issue raised in law, a reference of which can be found in the order dated 19.12.2023 passed by this Court, the delay of 663 days in filing this appeal is condoned.

3. I.A. No. 4832 of 2023 is, accordingly, allowed.

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4. Through this Commercial Appeal, the East Central Railway seeks to challenge the order dated 23rd July, 2021 passed in Commercial Case No.10 of 2019.

5. Commercial Case No.10 of 2019 was filed under Section 34 of the Arbitration and Conciliation Act, 1996 to lay a challenge to the arbitral award made on 20th September, 2018 by Mr. Justice R. K. Dutta, a former Judge of the Patna High Court.

6. Shorn of unnecessary details, it would suffice to indicate that the dispute which arose between the parties in relation to the agreement dated 25th June, 2009 was brought in the Court by filing C.W.J.C. No.2297 of 2015. In the said proceeding, the Court appointed the Sole Arbitrator who entered the reference at Patna and delivered the award at Patna. This is also not in dispute that the arbitral proceedings had commenced, continued and completed at Patna. In course of the hearing, Mr. Anil Kumar, the learned A.S.G.I., after referring to the materials on record does not dispute that as per the understanding of the parties the seat of arbitration was at Patna. Now, this is no longer in the realm of doubt that the expression “seat of arbitration” and “sittings of arbitrator/sitting or venue for arbitration” are different expressions and what is relevant to decide the jurisdiction of the Court shall be the “seat of the arbitration”.

7. In “*BGS SGS SOMA JV v. NHPC*” (2020) 4 SCC 234 the Hon’ble Supreme Court has observed as under:

“49. Take the consequence of the opposite conclusion, in the light of the facts of a given example, as follows. New Delhi is specifically designated to be the seat of the arbitration in the arbitration clause between the parties. Part of the cause of action, however, arises in several places, including where the contract is partially to be performed, let us say, in a remote part of Uttarakhand. If concurrent jurisdiction were to be the order of the day, despite the seat having been located and specifically chosen by the parties, party autonomy would suffer, which BALCO specifically states cannot be the case. Thus, if an application is made to a District Court in a remote corner of the Uttarakhand hills, which then becomes the court for the purposes of Section 42 of the Arbitration Act, 1996 where even Section 34 applications have then to be made, the result would be contrary to the stated intention of the parties — as even though the parties have contemplated that a neutral place be chosen as the seat so that the courts of that place alone would have jurisdiction, yet, any one of five other courts in which a part of the cause of action arises, including courts in remote corners of the country, would also be clothed with jurisdiction. This obviously cannot be the case. If, therefore, the conflicting portion of the judgment of BALCO in para 96 is kept aside for a moment, the very fact that parties have chosen a place to be the seat would necessarily carry with it the decision of both parties that the courts at the seat would exclusively have jurisdiction over the entire arbitral process.”

8. While the aforesaid is the legal position on the issue of jurisdiction, we do not find any reason to differ with the decision in Commercial Case No.10 of 2019

and would, therefore, dismiss the present Commercial Appeal, leaving it to the appellants to have recourse to law as available to them.

(Shree Chandrashekhar, A.C.J.)

(Anubha Rawat Choudhary, J.)

Manoj/-