

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**REQUEST CASE No.71 of 2024**

3i Info Tech Ltd., having its registered office at Tower no.-5, 3rd Floor and Tower No.-6 at 6th Floor, Vashi, Navi Mumbai-400703, Through its authorised signatutory Prakash Chandra Jha, aged about 56 years (Male), S/o- Tarakant Jha, resident of Vill.- 203, Mangalapuri, Mahrauli, P.S.- Fatehpur Dairy Dist- South Delhi, Delhi- 100030.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Planning and Development Department, Government of Bihar, through its Principal Secretary having its office at Old Secretariat, Patna-800015.
2. The Development Commissioner, Government of Bihar having its office at Old Secretariat, Patna-800015.
3. The Joint Director, Planning and Development Department, Government of Bihar through its Principal Secretary having its office at Old Secretariat, Patna-800015.

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                                                   |
|----------------------|---|-----------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Dhananjay Kumar, Advocate<br>Mr. Kundan Kumar Ojha, Advocate<br>Mr. Neelmani Raj, Advocate<br>Mr. Navneet Prashakar, Advocate |
| For the Respondent/s | : | Mr. P.K. Shahi, Advocate General<br>Mr. Vikas Kumar, Advocate                                                                     |

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**  
**ORAL JUDGMENT**

**Date : 24-01-2025**

We have heard Mr. Dhananjay Kumar, the  
  
learned Advocate for the request petitioner and Mr. P.K.  
  
Shahi, the learned Advocate General for the State.



2. The petitioner has made a request under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

3. It is not in dispute that a master service agreement dated 02.08.2016 was executed between the Planning and Development Department, Government of Bihar and the petitioner for selection of System Integrated IT Solution for *Mukhyamantri Nischay Swayam Sahayta Bhatta Yojna* Student Credit Card Scheme Skill Development Programme.

4. According to the petitioner, as required under the agreement, he initiated the work for the development of the project and also, in the process, issued invoices on several dates against various milestones completed under the agreement. However, on receipt of a communication against those invoices that an amount of Rs. 3,51,66,755.00/- was withheld by the respondents, he inquired for the reason, but there was none. As such, a notice was issued to the respondents on



26.06.2023, which only came to be replied on 05.09.2023.

5. With respect to each of the invoices, the respondent has stated the reason for withholding of the amount. Thereafter, another notice is said to have been sent to the respondent, but it was never replied.

6. As such, the present petition has been made under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator.

7. Opposing the claim of the petitioner, the learned Advocate General has drawn the attention of this Court to Clause 24 of the agreement which reads as hereunder:

*“24. GOVERNING LAW AND  
DISPUTE RESOLUTION*

*24.1. This Agreement shall be governed by and construed in accordance with the laws of India, without giving effect to conflict of law rules. The parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods*



*(1980) to this Agreement and the performance of the parties contemplated under this Agreement, to the extent that such convention might otherwise be applicable.*

*24.2 Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.*

*24.3 In case the escalations do not help in resolution of the problem within 3 weeks of escalation, both the parties should agree on a Mediator for communication between the two parties. The process of the mediation would be as follows:*

*(a) Aggrieved party should refer the dispute to the identified Mediator in writing, with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable.*

*(b) The Mediator shall use his best endeavours to conclude the mediation within a certain number of days of his appointment.*

*(c) If no resolution can be reached through mutual discussion or mediation within 30*



days then the matter should be referred to  
Experts for advising on the issue.

(emphasis supplied)

24.4 In case the mediation does not help in resolution and it requires expertise to understand an issue, a neutral panel of 3 experts, agreeable to both parties should be constituted. The process of the expert advisory would be as follows:

(a) Aggrieved party should write to the other party on the failure of previous alternate dispute resolution processes within the time frame and requesting for expert advisory. This is to be sent with a copy to the Mediator.

(b) Both parties should thereafter agree on the panel of experts who are well conversant with the issue under dispute.

(c) The expert panel shall use his best endeavors to provide a neutral position on the issue.

(d) If no resolution can be reached through the above means within 30 days then the matter should be referred to Arbitration.

24.5 Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this



*Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of Patna, Bihar (India). The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The Arbitration proceedings will be held at Patna, India. Any legal dispute will come under the sole jurisdiction of district Patna of Bihar.*

*24.6 Compliance with laws: Each party will comply with all applicable export and import laws and regulations.*

*24.7 Risk of Loss: For each hardware item, Implementation Agency bears the risk of loss or damage up to the time it is delivered to the Implementation/Purchaser-*



*designated carrier for shipment to Purchaser or Purchaser's designated location.*

*24.8 Third party components: Implementation Agency will provide all third party components solely on a pass-through basis in accordance with the relevant third party terms and conditions.”*

8. A bare reading of the clauses would indicate that any dispute arising out of or in connection with the agreement would be dealt, in the first instance, in accordance with the escalation procedure as set out in the Governance Schedule (Schedule V of the agreement). If in case, the escalations do not help in resolution of the problem within three weeks of the escalation, the parties would be required to agree on a Mediator for communication between the two parties. The process of mediation has also been delineated in the afore-noted said sub-clause 24.3.

9. The aggrieved party in that case has to refer the dispute to the identified Mediator in writing with a copy to the other party with the description of the



nature of the dispute, the quantum of the dispute, if any, and relief or suitable remedy sought and the Mediator shall use his best endeavors to conclude the mediation within a certain number of days of his appointment.

10. In case, no resolution is reached through mutual discussion or mediation within thirty days, then the matter has to be referred to experts for advising on the issue and for the aforesaid purpose, if it is found that the resolution requires intervention or explanation by a person who has an expertise to understand the issue, then a neutral panel of three experts, agreeable to both the parties, would be constituted; whereafter only, a request could be made for appointment of an Arbitrator by the High Court.

11. The pleadings indicate that with the escalation procedure as set out in the schedule, the grievance was voiced through a notice to the respondents on 26.06.2023. Though it was replied only after a delay of about three months, but all the issues of difference



were addressed by the respondents, which is not to the satisfaction of the petitioner.

12. The clause in the agreement specifies that in case the dispute is not resolved at this stage, then the parties will have to agree for a Mediator and the Mediator shall mediate by a defined process.

13. It appears that before exhausting the afore-noted procedure set out in Clauses 24.3 and 24.4 of the agreement, the present petition under Section 11(6) of the Act has been filed straightaway.

14. Responding to the afore-noted objection of the respondents, especially not exhausting the prior procedure before seeking the intervention of this Court under Section 11(6) of the Act, the learned counsel for the petitioner has referred to a judgment of the Supreme Court reported in ***Visa International Ltd. v. Continental Resources (USA) Ltd., AIR 2009 SC 1366***, wherein it has been held that if the agreement requires that the parties would make an attempt at



amicable settlement before invoking the arbitration clause, then, if there is no scope for amicable settlement of both the parties because of one party having taken a rigid stand and the evidence by way of correspondence showing that such dispute could not be resolved by a Mediator even with the help of an expert, then perhaps, such a request under Section 11(6) of the Act would not be considered to be premature.

15. The learned Advocate General has pointed out that the response to the notice under Clause 24.2 of the agreement is only an indication of withholding of monies because of non-fulfilling of the milestones laid out in the MSA.

16. This does not reflect any rigid stand and the matter could be mediated.

17. Thus, I find that without exhausting the procedure delineated in the agreement before coming to the Court for appointment of an Arbitrator, this application under Section 11(6) of the Act is premature.



18. This Court has also taken note of a judgment of this Court in ***Request Case No. 105 of 2019 and Analogous Cases (Nirman Engicons Private Limited vs. The State of Bihar and Ors.)***, wherein it has been held that without exhausting the requirements under the agreement, a request under Section 11(6) of the Act cannot be allowed.

19. For the aforesaid reason, this Court finds it difficult to accede to the request made by the petitioner.

20. The prayer is rejected.

21. However, the following directions are being issued:

If the petitioner takes recourse to the provisions contained in Clause 24(3) of the agreement within a reasonable period of three weeks, the respondents shall respond to it and would come to a finding regarding the Mediator, whereafter the Mediator shall identify the issue and make efforts to resolve the disputes. In case that



fails, the parties would approach each other for resolution of disputes and in case it is found that an expert opinion is needed to understand any issue, a neutral panel of three experts, agreeable to both the parties, would be set in motion.

22. Since the work has been completed and the dispute only remains with respect to non-payment of invoices raised on behalf of the petitioner, the issue ought to be resolved within a period of four months positively.

23. The petition stands disposed off accordingly.

**(Ashutosh Kumar, ACJ)**

Sauravkrsinha/  
Krishna-

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