

GAHC010101882019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Arb.P./18/2019**

M/S. BHARTIA INFRA PROJECTS LTD.  
(FORMERLY KNOWN AS BHARATIA ASSOCIATES PVT. LTD.) UNDER THE  
COMPANIES ACT, 1956, HAVING ITS REGD. OFFICE 201 ROYAL ARCADE,  
DR. B BARUAH ROAD, ULUBARI, GUWAHATI, ASSAM.

VERSUS

UNION OF INDIA AND ANR.  
REP. BY THE GENERAL MANAGER, N. F. RAILWAY, MALIGAON,  
GUWAHATI-781011.

2:THE CHIEF ENGINEER

N. F. RAILWAY  
MALIGAON  
GUWAHATI-781011

**Advocate for the Petitioner : MR. R HUSSAIN**

**Advocate for the Respondent : SC, NF RLY**

Linked Case : Arb.P./41/2020

M/S BHARTIA INFRA PROJECTS LTD.  
FORMERLY KNOWN AS BHARTIA ASSOCIATE PVT. LTD.  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGD. OFFICE AT 201  
ROYAL ARCADE

DR. B. BARUAH ROAD  
ULUBARI  
GUWAHATI- 781007  
ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS  
REP. BY THE GENERAL MANAGER (CON)  
N.F. RAILWAY  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

2:THE CHIEF ENGINEER/CONSTRUCTION- I  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

3:THE DY. CHIEF ENGINEER/CON-II  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

4:THE FA AND CAO/CON  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

5:SRI S.P. SINGH  
CHIEF ENGINEER/CON-VIII  
OFFICE OF GENERAL MANAGER (CONSTRUCTION)  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

6:SHRI S. HAJONG  
THE THEN CPRO/MLG AND NOW  
GGM/RVNL/MLG AND CO-ARBITRATOR  
OFFICE OF GENERAL MANAGER (CONSTRUCTION)  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

7:SHRI P. MAHANTI  
RETD. FA AND CAO/EAST COAST RAILWAY  
OFFICE OF GENERAL MANAGER (CONSTRUCTION)  
N.F. RAILWAY  
MALIGAON  
GUWAHATI- 781011.

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Advocate for : MR. R HUSSAIN

Advocate for : SC  
NF RLY appearing for THE UNION OF INDIA AND 6 ORS

**BEFORE**  
**HON'BLE MR. JUSTICE N. KOTISWAR SINGH**

**ORDER**

**28.11.2022**

Mr. R. Hussain, learned counsel for the petitioner submits that in the terms of agreement as contained in clause 64.7, it has been provided that subject to the provisions of the Arbitration and Conciliation Act, 1996 and the Rules thereunder, any statutory modification thereof shall apply to the arbitration proceeding under this clause. Under the circumstances, once the amendment has been brought into the Arbitration and Conciliation Act, 2015 by incorporating sub-section (5) of Section 12, it will not be permissible any more for the Railway authorities to appoint an arbitrator who has been or is serving as an employee of the arbitrator. Under the circumstances, there is no other option but for this Court to proceed appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

On the other hand, Mr. G. Goswami, learned standing counsel, Railway, submits that in view of the decisions of the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification Vs. ECI-SPIC-SMO-MCML(JV) A Joint Venture Company*** reported in ***(2020)14 SCC 712***; in ***Rajasthan Small Industries Corporation Limited Vs. M/s Ganesh Containers Movers Syndicate*** reported in ***(2019)3 SCC 282*** and in ***Union of India Vs. Pradeep Vinod Construction Company*** reported in ***(2020)2 SCC 464***, no application will lie for appointment of arbitrator under Section 11.

While considering the above rival contentions it has been brought to the notice of this Court that not only in ***Union of India Vs. M/s Tania Constructions Limited*** [***Special Leave Petition (Civil) No.12670/2020***, decided on 11.01.2021] but also in the recent decision of the Hon'ble Supreme Court in ***JSW Steel Limited Vs. South Western Railway & Anr.*** [***Special Leave Petition (Civil) No.9462/2022***, decided on 16.08.2022], the matters have been referred to a larger bench to decide the legality of the decision rendered by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification*** (supra). In that view of the matter, this Court is of the opinion that it will be more appropriate to await the decision of the Larger Bench of the Supreme Court as regards the efficacy of the decision of the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification*** (supra).

Accordingly, let these matters be listed after the decision by the Larger Bench is arrived at.

**Sd/- N. Kotiswar Singh**  
**JUDGE**

**Comparing Assistant**