

ORDER

OC – 25

IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE

AP-COM/154/2025

SATYA NARAYAN SHAW
VERSUS
SOURAV GHOSH

BEFORE :

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 7th April, 2025.

Appearance :
Mr. Shuvasish Sengupta, Adv.
Mr. Souvik Ghosh, Adv.
...for the petitioner
Mr. Varun Kedia, Adv.(VC)
Mr. Avesh Jaiswal, Adv.
...for Respondent no.1
Mr. Ayan Poddar, Adv.
Mr. Soham Dutta, Adv.
Ms. Anjali Shaw, Adv.
...for respondent no.3

The Court :1. The names of the respondent nos.1 and 2 be expunged from the array of the respondents, as the Court finds from the perusal of the records that the said respondents did not have any relevant role in the transaction between the petitioner and the respondent no. 3.

2. The petitioner prays for appointment of an arbitrator in terms of Clause 11.12 of the Spot E-Auction Scheme 2007, for sale of coal in Mahanadi Coalfields Limited (MCL) for the month of May, 2009. According to the

petitioner, 5(five) rakes of coal were allotted to the petitioner on the basis of the Spot E-Auction held on January 27, 2010. Each of the 5(five) rakes consisted of a capacity of 3950 Metric Ton of Grade “F” coal. According to the petitioner, the scheme of E-auction of 2007 was applicable. The petitioner deposited a sum of Rs.3,39,13,350.00 (Rs. 80,00,000.00 as EMD, Rs. 2,43,88,350.00 (Coal value) and Rs.15,25,000.00 (Additional Tax). The petitioner took delivery of three of the rakes of coal in the year 2010 out of the five rakes. One K.R. Enterprises, placed an order with the petitioner for supply of five rakes of coal from Deulbera siding (MCL) to NALCO. A ‘No Objection Certificate’ was issued by NALCO. The petitioner applied for change of destination on September 9, 2010 at the Kolkata office of the respondent no.3. The said applications were in connection with the two rakes which were purchased by the petitioner.

3. It is alleged that the respondent no.3 unilaterally amended the Letter of Indent by inserting “BOXN” alongside “BOBRN” despite being fully aware of NALCO’s operational requirements which had been outlined in their NOC.

4. The petitioner is aggrieved by such unilateral amendment of the Letter of Indent. Upon receipt of the Indent, the respondent no.3 supplied two rakes of coal on September 11, 2010. NALCO rejected the consignments on 12th and 14th September, 2010. K. R. Enterprises also terminated the order.

5. Being aggrieved by all the aforementioned issues, the petitioner moved two writ petitions before the High Court of Orissa at Cuttack.

6. It appears that in the second writ petition, the respondent no. 3 was also a party. The writ petition was ultimately withdrawn and liberty was granted to the petitioner to proceed by invoking the arbitration clause. Such liberty was granted by order dated April 5, 2019.

7. It is the specific contention of the petitioner that the respondent no. 3 returned the amount deposited by the petitioner in respect of the two rakes, after deducting some charges. The petitioner is also aggrieved by such action, apart from the issues which had also been raised in the writ petitions. The petitioner, thereafter, invoked arbitration on October 12, 2024.

8. The grievance is with regard to non-delivery of two rakes of coal purchased in the e-auction floated by Mahanadi Coalfields Limited, refund of the money deposited in respect of the said two rakes upon deduction of certain charges, the loss suffered by the petitioner on account of such refund, non-delivery and cancellation of the order by E.R. Enterprise. Hence, the application has been filed before this Court for appointment of an arbitrator in accordance with the Scheme of 2007.

9. The arbitration clause is quoted below:-

“11.12 In the event of any dispute, Bidder / Buyer is necessarily required to represent in writing to the General Manager (Sales) of the concerned coal company, who would deal with the same in a period of one month from such representation. Thereafter, if required the matter be determined by the Director-In-Charge of Marketing of the concerned coal company. Any interpretation of any clause of this will be subject to clarification by CIL, which will be deemed as firm and final. All disputes arising out of this scheme, or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted at

Calcutta at a place to be notified by CIL. The arbitrator shall be appointed by the Chairman and Managing Director, CIL upon written request in this behalf. The award rendered by the Arbitrator shall be final and binding on the parties. (The place of arbitration & nomination of arbitrator be varied appropriately in view of the Coal Company involved)”

10. Learned advocate for the respondent no. 3 submits that there is nothing to show that the Scheme of 2007 was also applicable to the subject Spot E-auction. It is also submitted that unilateral amendments to the letter of Indent was not done by the respondent no. 3. The prayer for change of destination etc. was not permissible. The rakes were changed by the railways and not by MCL. Moreover, the claims arising out of the Spot E-auction in 2010, were completely barred by limitation.

11. Considered the rival contentions of the parties. This Court is required to, prima facie, ascertain whether there is any existence of an arbitration clause. The Scheme provides for sale of coal by way of e-auction for the month of May, 2009. The scheme contains an arbitration clause. In the instant case, the e-auction was held in January, 2010. The respondent could not produce any scheme to the contrary, which did not contain an arbitration clause. The respondent could not satisfy this court that the arbitration clause was not applicable in the subject e-auction. It also appears that disputes arose with regard to change of rakes, refund of money, non-delivery of coal and connected matters. The respondent no. 3 allegedly did not load two rakes, for which the petitioner had made the payment in advance. The ground for not loading is a matter which is an arbitrable issue. While the respondent no. 3 submits that

the Railways Authorities were responsible for the amendment of the Indent, change of the rakes etc., the petitioner submits that the respondent no. 3 was required to supply the coal in respect of the two rakes, but did not do so and refunded the money after 10 years. It appears that there is a dispute with regard to the refund. There are allegations that the refund of the money, upon deduction of some charges unilaterally by the respondent no. 3, caused serious losses. Such refund was made sometime in August and December, 2019. It also appears that two writ petitions were filed and liberty was granted to the petitioner to approach the arbitrator for resolution of the dispute.

12. Under such circumstances, this Court is not in a position to hold that the disputes are “deadwood”. Here, there are various claims made by the petitioner at various stages. Ultimately, the petitioner is mostly aggrieved by the refund. Such refund took place sometime in August and December, 2019. The petitioner is entitled to the exclusion of the time between March 15, 2020 and February 28, 2022, while computing the period of limitation, in invoking arbitration. Thus, the issue of limitation will have to be adjudicated in this case, on the basis of the evidence to be adduced by the parties. The other issue which has been raised by Mr. Soham Dutta that, the respondent no. 3 did not have a role to play either in the change of Indent or in the change of rake etc. are again arbitrable disputes.

13. Keeping all objections open for adjudication by the learned arbitrator, including arbitrability of the dispute and admissibility of the claims, limitation etc., this application is allowed.

14. The application is disposed of by referring the matter to arbitration by appointing Mr. Ishaan Saha, learned Advocate, as the sole arbitrator, to arbitrate upon the disputes between the parties. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)