

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARB.A. No. 22 of 2015

1. M/s. Kambo Minerals, (Borrower), Geedam Road, Jagdalpur, District Bastar, Chhattisgarh 494001, Through : the Partner Shri Amolak Singh, S/o. Shri Gulzar Singh, R/o. Geedam Road, Jagdalpur, District Bastar (C.G.) 494001

---- Petitioner

Versus

1. L & T Finance Limited, having its Registered Office Address at L & T House, Ballard Estate, Mumbai – 400 001

Corporate Office at the Metropolitan, 8th Floor, C-25/C-26, 'E' Block, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051

Having its Branch Office At-FF/08, Avinash Lounge, Maruti Business Park, G.E. Road, Raipur.

-----Respondent

For Petitioner	:	Mr. Shrikant Mishra, Advocate
For Respondent	:	Mr. Kshitij Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08/10/2015

1. This this is an application under Section 11 (5) & 11 (6) of the Arbitration and Conciliation Act, 1996.
2. Counsel for the petitioner submits that at the time of filing of this application, only the notice was sent for appointment of arbitrator by the respondent and subsequently the arbitrator might have been appointed, but as per prayer made, the arbitrator may be appointed.
3. Perusal of the reply would reflect that the respondent has already appointed one arbitrator named Shri Bharat B. Jain and it was

informed to the applicant vide letter dated 16.05.2015.

4. Since the arbitrator has already been appointed, the applicant if at all aggrieved by such appointment of the arbitrator, the remedy would lie under Section 13 of the Arbitrator and Conciliation Act, 1996.
5. The Hon'ble Supreme Court in case of **Antrix Corp. Ltd. Vs. Devas Multimedia P. Ltd.** reported in **2013 AIR SCW 2781** has held at para 32 and 33 as under :-

“32. Sub-Section (6) of Section 11 of the 1996 Act, quite categorically provides that where the parties fail to act in terms of a procedure agreed upon by them, the provisions of Sub-Section (6) may be invoked by any of the parties. Where in terms of the Agreement, the arbitration clause has already been invoked by one of the parties thereto under the I.C.C. Rules, the provisions of Sub-section (6) cannot be invoked again, and, in case the other party is dissatisfied or aggrieved by the appointment of an Arbitrator in terms of the Agreement, his/its remedy would be by way of a petition under Section 13, and, thereafter, under Section 34 of the 1996 Act.

33. The law is well settled that where an Arbitrator had already been appointed and intimation thereof had been conveyed to the other party, a separate application for appointment of An Arbitrator is not maintainable. Once the power has been exercised under the Arbitration Agreement, there is no power left to, once again, refer the same disputes to arbitration under Section 11 of the 1996 Act, unless the order closing the proceedings is subsequently set-aside. In *Som Datt Builders Pvt. Ltd. Vs. State of Punjab* [2006 (3) RAJ 144 (P&H) : (AIR 2006 P & H 124)], the Division Bench of the Punjab & Haryana High Court held, and we agree with the finding, that when the Arbitral

Tribunal is already seized of the disputes between the parties to the Arbitration Agreement, constitution of another Arbitral Tribunal in respect of those same issues which are already pending before the Arbitral Tribunal for adjudication, would be without jurisdiction.”

6. In light of the aforesaid principles laid down by the Hon'ble Supreme Court, the prayer of the applicant for appointment of arbitrator has become infructuous.
7. In a result, the arbitration application is dismissed having become infructuous.

Sd/-
(Goutam Bhaduri)
Judge