

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No.43 of 2016**

Sarda Energy & Minerals Limited Through Its Authorised Signatory,
Registered Office: Sarda Energy & Minerals Limited, Industrial
Growth Centre, Siltara, District Raipur, Chhattisgarh

---- Applicant

Versus

1. National Mineral Development Corporation Limited (NMDC) Through Its Chairman-cum-Managing Director, Registered Office NMDC Ltd. 10-03-311/a, Khanij Bhawan, Castle Hills, Masab Tank, District Hyderabad (Telangana), Pin Code 500028
2. Joint General Manager (Commercial), National Mineral Development Corporation Limited, 10-3-311/a, Khanij Bhawan, Castle Hills Masab Tank, District Hyderabad (Telangana), Pin Code 500 028
3. General Manager, National Mineral Development Corporation Limited, Bacheli Complex, BOIP, Deposit No. 10/11 A, Bacheli, Post Office Bacheli, District Dantewada, Chhattisgarh, Pin Code 494552
4. Joint General Manager (Production), National Mineral Development Corporation Limited, Bacheli Complex, BOIP, Deposit No. 10/11 A, Bacheli, Post Office Bacheli, District Dantewada, Chhattisgarh, Pin Code 494552

---- Respondents

For Petitioner	:	Mr.Amrito Das, Advocate
For Respondents	:	Mr.N.Naha Roy, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/09/2017

1. The short question that arises for consideration is whether the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'Act of 1996') is maintainable in the light of arbitration clause providing that venue of Arbitration shall be Hyderabad.
2. The respondents by order dated 6.8.2011 allocated quantities

of Iron Ore Fines to the petitioner on provisional basis for the period of 2011-2012. Terms and condition for sale/allocation of Iron Ore Fines was also supplied to the petitioner. There is an agreement between the parties and agreement contains arbitrable clause. Dispute has arisen between the parties. On 29.6.2015 the petitioner sent a legal notice to the respondents and also sent a legal notice on 20.10.2015 for referring the matter to the arbitrator for settlement of the dispute. The respondents by memo dated 20.1.2016 replied that since the alleged due has already barred by limitation, there is no need to appoint the arbitrator.

- 3.** Mr.Amrito Das, learned counsel for the petitioner, would submit that place of seating (juridical seat) has not been indicated and only venue of arbitration has been indicated at Hyderabad, therefore, the application under Section 11(6) of the Act of 1996 is maintainable before this Court and this High Court is an appropriate Court for appointment of arbitrator.
- 4.** Mr.N.Naha Roy, learned counsel for the respondents, would submit that venue would include juridical seat and therefore, the High Court of Judicature at Hyderabad for the States of Andhra Pradesh and Telangana would be an appropriate High Court for appointment of Arbitrator under Section 11(6) of the Act of 1996 and therefore, the application deserves to be rejected.
- 5.** I have heard learned counsel for the parties, considered their

rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. In order to consider the dispute raised at the Bar and to determine the arbitration clause, it would be appropriate to notice Clause 11 of the terms and conditions of the Sale/Allocation which reads as under:-

"11. ARBITRATION

In the event of any dispute or difference between the parties hereto, such dispute or difference shall be resolved amicably by mutual consultation. If however, any dispute or difference remains unresolved the same shall be settled by arbitration by referring the claims to the sole Arbitrator to be appointed by the Chairman-Cum-Managing Director/Chief Executive (designated by any other name) of the Seller, who shall be the appointing authority of Sole arbitrator.

Chairman-cum-Managing Director of the Seller shall send a panel consisting of three names of the Buyer for selecting one person out of the panel. Such selected person shall be the Sole Arbitrator for adjudicating disputes so referred to him. The award of such sole Arbitrator shall be binding on both parties.

The venue of arbitration shall be Hyderabad and the cost of the arbitration shall be as decided in the arbitration award. No court shall have the jurisdiction to settle any dispute in view of this arbitration clause. The award of such arbitration shall be binding on both parties."

A careful perusal of the aforesaid clause would show that the venue of arbitration shall be Hyderabad.

7. The distinction between venue and seat came to be considered before the Constitution Bench of the Supreme Court in the matter of **Bharat Aluminium Company Vs.**

Kaiser Aluminium Technical Services Inc.¹ in which Their

Lordships considered the distinction as under:-

“100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, *The Law and Practice of International Commercial Arbitration* (1986) at Page 69 in the following passage under the heading “The Place of Arbitration”:-

“The preceding discussion has been on the basis that there is only one 'place' of arbitration. This will be the place chosen by or on behalf of the parties; and it will be designated in the arbitration agreement or the terms of the reference or the minutes of proceedings or in some other way as the place or “seat” of the arbitration. This does not mean, however, that the arbitral tribunal must hold all its meetings or hearings at the place of arbitration. International commercial arbitration often involves people of many different nationalities, from many different countries. In these circumstances, it is by no means unusual for an arbitral tribunal to hold meetings – or even hearings – in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses... It may be more convenient for an arbitral tribunal sitting in one country to conduct a hearing in another country - for instance, for the purpose of taking evidence..... In such circumstances, each move of the arbitral tribunal does not of itself mean that the seat of arbitration changes. The seat of the arbitration remains the place initially agreed by or on behalf of the parties.”

8. Recently, in the matter of **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited & Ors.**² the Supreme Court has reiterated and held

1 (2012) 9 SCC 552

2 (2017) 7 SCC 678

that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration. It was observed as under:-

“20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction- that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

21. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see **Swastik Gases Private Limited v. Indian Oil Corporation Limited**, (2013) 9 SCC 32. This was followed in a recent judgment in **B.E. Simoes Von Staraburg Niedenthal and Another v. Chhattisgarh Investment Limited**, (2015) 12 SCC 225. Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. Appeals are disposed of accordingly.”

9. In the light of principle of law laid down by the Supreme Court in the aforesaid judgments (supra), it is quite vivid that there is clear distinction between “venue” and “seat”. In the present case, the venue has been fixed at Hyderabad, but no seat has been fixed at Hyderabad, therefore, it cannot be held that High Court of Judicature at Hyderabad for the States of Andhra Pradesh and Telangana shall have an exclusive jurisdiction over the matter and this Court shall not have the jurisdiction. In fact, this Court has jurisdiction under Section 11 (6) of the Act of 1996 to appoint the arbitrator.

10. So far as the point of limitation is concerned, that will be considered by the Arbitral Tribunal (Please See **S.B.P. & Co Vs. Patel Engineering & Anr.**³ and **National Insurance Co. Ltd. Vs. M/s. Boghara Polyfab Pvt. Ltd.**⁴ Followed in **Bharat Rasiklal Ashra Vs. Gautam Rasiklal Ashra**⁵.)

11. Therefore, in exercise of my power under Section 11(6) of the Act of 1996, I hereby appoint Hon'ble Mr.Justice V.K. Shrivastava, Former Judge, High Court of Chhattisgarh, resident of Ware House Road, Bilaspur, District Bilaspur, Chhattisgarh as the sole arbitrator to adjudicate the dispute that has arisen between the parties, in accordance with the provisions of the Act of 1996.

12. Registry is directed to communicate this order to learned sole arbitrator- Hon'ble Mr.Justice V.K. Shrivastava, Former

³ (2005) 8 SCC 618

⁴ (2009) 1 SCC 267

⁵ (2012) 2 SCC 144

Judge, High Court of Chhattisgarh forthwith to enable him to enter upon the reference under Section 12 (2) of the Act of 1996 and decide the matter as expeditiously as possible.

- 13.** The arbitration application is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-