

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No. 60 of 2016**

D.B. Power Limited, C-31 Naman Corporate Link, 3rd floor, G – Block, Opposite Dena Bank, Bandra Kurla Complex, Bandra (East), Mumbai – 400051, Maharashtra, And also at: Village Badadarha, District Janjgir Champa, Chhattisgarh, Through its authorized Signatory Shailendra Bajpai, S/o- Shri D.P. Bajpai, Aged About-36, Post- Dy. Manager Legal, D.B. Power, Village Badadarha, District Janjgir Champa, Chhattisgarh

---- Petitioner/Applicant**versus**

South Eastern Coalfields Limited, through The Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.), PIN CODE- 495006

---- Respondent

For Petitioner : Shri Vinay Pandey, Advocate

For Respondent : Shri R.K. Gupta, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****20/01/2017**

1. This application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') has been filed by the Petitioner for appointment of Arbitrator.
2. The Petitioner and the Respondent both are companies. The Respondent in fact is a Government of India undertaking. The Petitioner has set up a 1200 MW (2 X 600) coal based thermal power plant and this thermal power plant has obtained coal from the Respondent. The Petitioner claims that the coal supplied by the Respondent was sub-standard and therefore claims that it is entitled

to damages from the Respondent. The contents of the Arbitration Clause reads as follows:

“17. Dispute Resolution/Arbitration:

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 final and conclusive.

All disputes arising out of this scheme or in relation thereto in any form whatsoever shall be dealt Specially 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.”

3. The first objection raised on behalf of the Respondent is that no representation has been made to the General Manager. On the record I find that the representation has been made to the Chairman-cum-Managing Director of the Respondent. Even if it was required to be made to General Manager (Sales), nothing prevented the CMD from himself referring the matter to the General Manager. In any event, General Manager (Sales) is only to deal with the objections within one month and thereafter the matter has to be sent to the Director-in-Charge of Marketing. But this is also an in house proceeding and therefore, in my view, it cannot termed the procedure for appointment of Arbitrator. Arbitrator has to be appointed by the CMD and that request was made to CMD to appoint an Arbitrator.

4. Other objection raised by Shri R.K. Gupta that the sample of coal has not been sent to the referee after third party analysis and therefore there is no arbitral dispute. I am not at all in agreement with this submission. Whether non-reference of the sample after third party analysis to the referee is mandatory or not is also a dispute which can be decided by the Arbitrator. This is definitely a dispute and cannot be said to be non-arbitral dispute.
5. Therefore, invoking the jurisdiction under Section 11 (6) of the Arbitration and Conciliation Act, 1996, I hereby appoint Shri Justice Dharendra Mishra, residing at "Shyam Sadan", Tilak Nagar, Bilaspur, a retired Judge of High Court of Chhattisgarh, as Arbitrator in the case.
6. The Petitioner and the Respondent may file their claim/counter-claim before the aforesaid Arbitrator within a period of four weeks from today who is requested to dispose of the matter within the time prescribed in the Arbitration and Conciliation Act, 1996, as amended.
7. The parties are directed to appear before the Arbitrator on 19.03.2017. It is made clear that the parties shall be free to raise all issue before the Arbitrator.
8. Registry is directed to send a copy of this order to Shri Justice Dharendra Mishra so as to reach within two weeks from today.
9. The arbitration application stands disposed of.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE