

HIGH COURT OF CHHATTISGARH, BILASPURArbitration Application No.56 of 2017

M/s Bhilai Auxilliary Industry, 29, Industrial Estate, Bhilai, Tahsil &
Distt: Durg (CG) Pin 490026

---- Petitioner

Versus

1. Chief Executive Officer, Bokaro Steel Plant, Steel Authority of India Ltd., Bokaro Steel City, Jharkhand, Pin 827001
2. Executive Director, Salem Steel Plant, Steel Authority of India Ltd., Salem (Tamil Nadu), Pin – 636 013
3. Chairman, Steel Authority of India Ltd., Ispat Bhawan, Scope Minar, Lodhi Road, New Delhi 110 003

---- Respondents

For Petitioner:	Mr.Tribhuwan Das, Advocate
For Respondent No.1:	Mr.Kashif Shakeel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/05/2018

1. The petitioner entered into agreement with respondent No.1 and thereafter, purchase order dated 26.9.2002 was issued in favour of the petitioner and pursuant to which, supply was made to respondent No.1 by the petitioner at Bokaro Steel Plant. Thereafter, certain dispute has arisen between the parties and as per the provisions contained in Arbitration Clause, this arbitration application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') has been filed by the petitioner herein for appointment of arbitrator.
2. Learned counsel for the petitioner would submit that since the petitioner-Industry is located in the State of Chhattisgarh and

supply was made to Bokaro Steel Plant, Distt. Jharkhand from Chhattisgarh, this Court has jurisdiction to entertain the arbitration application.

3. On the other hand, learned counsel for respondent No.1 would submit that jurisdiction to hear the application would lie to Jharkhand High Court and purchase order contains an ouster clause which only gives jurisdiction to Bokaro Steel City relying upon Clause 18 and 20 of the agreement, therefore, this Court will have no jurisdiction to entertain the arbitration application.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
5. The Supreme Court in the matter of Speech and Software Technologies (India) Private Limited v. Neos Interactive Limited¹ has held as under:-

“11. By now it is well settled that exercise of power under Section 11(6) of the Act is judicial power. After the decision of this Court in SBP and Co. v. Patel Engg. Ltd.² the Designated Judge has to consider the claim of both the parties to the matter and pass a reasoned order. It is also well settled that existence of arbitration agreement is a condition precedent before exercise of powers under Section 11(6) of the Act. The preliminary matters to be considered by the court are : (1) existence of arbitration agreement, (2) territorial jurisdiction, (3) whether there are live issues to be referred to the arbitrator, and (4) whether application is filed within the period of limitation prescribed by the law. If the court finds that the arbitration agreement does not exist or is rescinded then the prayer for referring the dispute to the arbitrator will have to be rejected.”

1 (2009) 1 SCC 475

2 (2005) 8 SCC 618

6. Thereafter, the Supreme Court in the matter of **Rajasthan State Electricity Board v. Universal Petrol Chemicals Limited**³ has considered an ouster clause in the purchase order and applicability of Section 20 of the Code of Civil Procedure relying the earlier judgments and held as under:-

“27. The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In both the agreements in Clause 30 of the general conditions of the contract it was specifically mentioned that the contract shall for purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only and in addition in one of the purchase order the expression used was that the court at Jaipur only would have jurisdiction to entertain or try the same.”

7. After having noticed the judgments of the Supreme Court in this regard, reverting to the facts of the present case, it is quite vivid that agreement was entered into between the parties at Bokaro Steel City and supply was also made at Bokaro Steel City. The agreement contains an ouster clause relating to jurisdiction which states as under:-

“20. **Jurisdiction:** This contract is deemed to have been executed at Bokaro Steel City. Dist.-Bokaro and only the court at chas/Bokaro will have the jurisdiction to try any suit or proceeding arising out

3 (2009) 3 SCC 107

of this contract.”

8. Since the agreement was entered into between the parties at Bokaro Steel City and supply was also made at Bokaro Steel City and merely because the petitioner-Industry is located in the State of Chhattisgarh, this Court is not appropriate High Court to deal with the application under Section 11(6) of the Act of 1996. The judgment relied upon by the petitioner in **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.**⁴ is clearly distinguishable to the facts of the present case.
9. Accordingly, the arbitration application deserves to be and is hereby dismissed. However, the petitioner is at liberty to move the jurisdictional High Court for appointment of arbitrator, if any. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

4 (2012) 9 SCC 552