

HIGH COURT OF CHHATTISGARH, BILASPURArbitration Appeal No.03 of 2009

The General Manager, South Eastern Coalfields Limited, Jamuna and Kotma Area, P.O. Jamuna Colliery, Distt. Anuppur (M.P.) representing South Eastern Coalfields Limited a subsidiary of Coal India Limited
 ---- Appellant

Versus

Janbaaz Guards and Allied Services through Proprietor Lt. Col. J.S. Viridi (Retd), Registered Office 21/29, Civil Lines, Behind C.S.E.B. Raipur (CG)

---- Respondent

For Appellant:	Dr.N.K.Shukla, Senior Advocate with Mr.Vikram Sharma, Advocate
For Respondent:	Mr. Prafull Bharat, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/01/2018

1. This arbitration appeal is directed against the order dated 12.11.2008 passed by the District Judge, Bilaspur rejecting the appellant's application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996').
2. The appellant awarded a contract to the respondent on 28.7.2004 employing the security services of the respondent in the project and establishment under Jamuna Kotma Area namely Mini Open Cast Mine, Kotma and Jamuna Sub-Area of Jamuna Kotma Area, for which a dispute arose pertaining to deduction of losses sustained by the appellant on account of theft or losses caused due to negligence of security personnels of the respondent agency as

well withholding of earnest money and the same had been referred to the sole Arbitrator Shri Y.N.Shrivastava, Ex-CGM, SECL under the terms of agreement entered into between the parties on 28.7.2004 for which learned Arbitrator passed an award on 16.9.2006. The sole arbitrator in the award directed to return 90% of the deduction made by the appellant and also directed to return the deduction under security deposit which was withheld by the appellant and awarded an amount of ₹ 6,77,310/- to the respondent while declining interest.

3. Feeling aggrieved against the award passed by learned sole arbitrator, the appellant has filed an application under Section 34 (2) of the Act of 1996, whereas the respondent has also filed an application challenging the part of order declining interest. Learned District Judge, Bilaspur by its impugned order rejected both the applications finding no merit. Against the order of the District Judge, this arbitration appeal under Section 37(1) (b) of the Act of 1996 has been filed by the appellant herein only.
4. Dr.N.K.Shukla, learned Senior Counsel appearing for the appellant, would submit that learned arbitrator as well as learned District Judge committed legal error in rejecting the appellant's application under Section 34(2) of the Act of 1996 and as such, the impugned order passed by the District Judge rejecting the application under Section 34(2) of the Act of 1996 deserves to be set aside.
5. On the other hand, Mr.Prafull Bharat, learned counsel for the respondent, would support the impugned order.

6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the record with utmost circumspection.
7. It is admitted position on record that question of jurisdiction raised by the appellant before this Court was not raised before the arbitrator under Section 16(2) and (3) of the Act of 1996 and first time, objection was raised before the District Judge under Section 34(2) of the Act of 1996 that the sole arbitrator was appointed only for dealing with a dispute flowing from one arbitration agreement, whereas learned arbitrator has considered the dispute flowing from three arbitration agreements, therefore, the award passed is liable to be set aside. Learned District Judge has declined to accept the plea raised by the appellant herein in view of the provisions contained in Section 16(2) and 16(3) of the Act of 1996.
8. For the sake of convenience, it would be appropriate to notice Section 16(2) & (3) of the Act of 1996 which reads as under:-

“16(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”
9. A focused glance of the aforesaid provision would show that the question of jurisdiction as well as the question that the arbitral tribunal is exceeding the scope of its authority has to be raised at

the earliest so that the arbitrator, who has jurisdiction, to rule the question of his own jurisdiction.

10. In the matter of **Mcdermott International Inc. Vs. Burn Standard Co. Ltd. And others**¹ the Supreme Court has clearly held that the question relating to jurisdiction of the arbitrator must be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. It was observed as under:-

“51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the Arbitrator would be subject-matter of challenge under Section 34 of the Act. In the event, the arbitrator opined that he had no jurisdiction in relation thereto an appeal thereagainst was provided for under Section 37 of the Act.”

11. Similarly, the Supreme Court in the matter of **MSP Infrastructure Limited Vs. Madhya Pradesh Road Development Corporation Limited**², has held that all objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. It was observed as under:-

“16. It is not possible to accept this submission. In the first place, there is nothing to warrant the inference that all objections to the jurisdiction of the Tribunal cannot be raised under Section 16 and that

1 (2006) 11 SCC 181

2 (2015) 13 SCC 713

the Tribunal does not have power to rule on its own jurisdiction. Secondly, Parliament has employed a different phraseology in Clause (b) of Section 34. That phraseology is "the subject matter of the dispute is not capable of settlement by arbitration." This phrase does not necessarily refer to an objection to 'jurisdiction' as the term is well known. In fact, it refers to a situation where the dispute referred for arbitration, by reason of its subject matter is not capable of settlement by arbitration at all. Examples of such cases have been referred to by the Supreme Court in *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited*³ This Court observed as follows:- (SCC pp. 546-47, para 36)

"36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grants of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

The scheme of the Act is thus clear. All objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. However, if one of the parties seeks to contend that the subject matter of the dispute is such as cannot be dealt with by arbitration, it may be dealt under Section 34 by the Court."

12. Following the principle of law laid down by the Supreme Court in the above-stated judgment (*supra*), if the facts of the present case are examined, it is quite vivid that undisputedly no such plea regarding jurisdiction under the provisions contained in Section 16(2) & (3) of the Act of 1996 was raised by the appellant

³ (2011) 5 SCC 532

before learned arbitrator and the appellant participated in the arbitral proceedings without demur or protest. The appellant having participated and having taken calculated chance before the arbitrator cannot turn around finding the decision unpalatable and say that the arbitrator has no jurisdiction and/or has exceeded the scope of its authority while deciding the application.

13. In view of the aforesaid legal discussion, the arbitration appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s). It is informed by Mr.Prafull Bharat, learned counsel for the respondent that the award passed by the Arbitrator has already been executed. Same is placed on record. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-