

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 5839 of 2005**

1. Ambuja Cement Eastern Ltd. (Previously Known as M/s Modi Cement Ltd.) A Company Act 1956 having its registered office at Rawan, Tahsil Baloda Bazar, Raipur (C.G.)
2. Mr. Kranti Agrawal, S/o Shri J.P. Agrawal, Share Holder, Opp. Police Station, Baloda Bazar, Distt. Raipur (C.G.)

---- Petitioners**Versus**

1. Steel Authority of India Ltd., Through its Managing Director Bhilai Steel Plant, A company registered under the Companies Act, 1956, Registered Office at Ispat Bhavan, Lodhi Road, New Delhi.
2. General Manager (M & SP), Bhilai Steel Plant, Durg (C.G.)

---- Respondents

For Petitioners	:	Shri Ashish Shrivastava, Advocate.
For Respondents	:	Dr. N.K. Shukla, Senior Advocate with Shri Shailendra Shukla, Advocate.

Order On Board**02/05/2018**

(1) This writ petition is directed against the impugned letter dated 2.7.2005 by which petitioners' representation claiming refund of excess amount allegedly charged under the contract dated 26.06.2001 for lifting of BF granulated slag from Bhilai Steel Plant has been rejected .

(2) Learned counsel appearing for the petitioners would submit that the petitioners are entitled for refund of Rs. 1,21,46,614/-, which has arbitrarily been charged by the respondents-Steel Authority of India (henceforth "SAIL").

(3) Learned Senior Counsel appearing for the respondents -SAIL would submit that instant writ petition is not maintainable in view of the alternative remedy of arbitration available in the contract agreement dated 26.06.2001 in shape of Clauses 17.0 to 17.10. He placed reliance upon the judgment of the Supreme Court in the matter of **Hindustan Petroleum Corpn. Ltd. Vs. M/s. Pinkcity Midway Petroleums**¹ in support of his case.

(4) In reply to the submission made by learned senior counsel appearing for the respondents-SAIL, learned counsel for the petitioners while relying upon the judgment of the Supreme Court in the matters of **Ram Barai Singh and Company Vs. State of Bihar & others**² & **Union of India and others Vs. Tania Construction Private Limited**³ would submit that availability of arbitration clause in agreement is no bar to maintain the writ petition.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) Indisputably, the petitioners are claiming refund of excess amount alleged to have been paid pursuant to the contract dated 26.06.2001 during currency of the agreement. The arbitration clause undisputedly provides for resolution of the dispute by way of arbitration.

(7) It is correct to say that availability of arbitration clause in agreement is no bar to maintain the writ petition.

(8) Having heard learned counsel appearing for the parties and further considering the factual dispute involved in the writ petition, I am of the opinion that it would be appropriate to relegate the petitioners to avail the remedy of arbitration clause 17 of the agreement dated 26.06.2001.

¹ 2003 STPL (LE) 32151 SC

² (2015) 13 SCC 592

³ (2011) 5 SCC 697

(9) In view of above, the writ petition stands finally disposed of reserving the liberty in favour of the petitioners to invoke the arbitration clause 17 of the agreement dated 26.6.2001 in accordance with law. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-