

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 707 of 2019

Titagarh Wagons Ltd., At Titagarh Towers, 756, Anandapur, Eastern Metropolitan Bypass, Kolkata 700107.

---- Petitioner

Versus

Bharat Aluminium Company Ltd., At Balco Nagar, Korba, Chhattisgarh – 495684 and its office at: Aluminium Sadan, Core-6, Scope Office Complex, 7, Lodhi Road, New Delhi - 110003

-----Respondent

For Petitioner	: Mr. Amrito Das, Advocate
For Respondent	: Mr. Raja Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

16/12/2019

1. This petition has been brought being aggrieved by the order dated 25.07.2019, passed by the District Judge, Korba, dismissing the application filed by the petitioner under Section 27 of Arbitration and Conciliation Act, 1996 (In Short the Act, 1996).
2. It is submitted by the counsel for the petitioner that according to Clause 29 (2) of the agreement between the parties, in the arbitration clause, there is specific mention that place of arbitration shall be Korba, therefore, the Court of District Judge, Korba has jurisdiction to entertain the application under Section 27 of the Act, 1996. It is submitted that the learned District Judge has misinterpreted the order of the Arbitration Tribunal. The learned Arbitration Tribunal has very

clearly ordered that the applicant is permitted to apply to the concerned Court for assistance in taking evidence as detailed in its application under Section 27 of the Act, 1996 and the tribunal accorded approval for the same. The “concerned Court” mentioned in the order is meant for the Court within jurisdiction and the same is the Court of District Judge at Korba. Hence, the impugned order is erroneous and illegal, therefore, it may be set-aside.

3. Counsel for the respondent submits that the petitioner has misinterpreted Clause-29 of the agreement. This clause of the agreement does not confer any jurisdiction to the Court of District Judge, Korba. The Court i.e. defined under Section 2 (i) (e) includes principal Civil Court of original jurisdiction in a district, and also includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration. Therefore, the Courts defined in the provision do not include the Court for the purpose of Section 27 of the Act, 1996. It is also submitted that the petitioner had filed an application under Section 27 of the Act, 1996, before the learned Arbitration Tribunal praying for taking assistance of the High Court of Calcutta in taking evidence. The order of the learned Tribunal is very clear on this point that approval was given for taking assistance of High Court of Calcutta in taking evidence as detailed in the application under Section 27 of the Act, 1996 filed by the petitioner. Therefore, the petitioner now can not deviate from his prayer and there is no direction to file any application in the Court of District Judge, Korba. Therefore, the petition is without any substance, which may be dismissed.

4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Considered on the submission made by the counsel for both the parties.
6. The petitioner had earlier filed an application under Section 27 of the Act, 1996 making prayer in Paragraph No.14, which reads as under :-

“a) The Arbitral Tribunal be pleased to apply to the Hon'ble Court at Calcutta for its assistance in taking evidence by-

- (i) Issuing summons to the Directorate (I & L) RDSO, Kolkata having its office at 3, Koilaghat Street, Kolkata – 700 001 to produce the originals of the documents annexed as Annexures “A” and “B” hereto;
- (ii) by directing the Director (I & L) RDSO, Kolkata to depute a competent witness to produce the originals of the documents annexed as the Annexure “A” and “B” hereto, to depose with regard to the contents of the same and to further deposit with regard to the other subjects relating thereto or connected therewith as detailed in paragraph 10 hereinabove;
- (iii) do direct the witness that may be deputed by the Director (I & L) RDSO, Kolkata to appear before this learned Tribunal on 21st and 22nd May, 2019 with the originals of the documents annexed as the Annexures “A” and “B” hereto.
- (iv) to subject himself to such examination and cross-examination in connection therewith and in connection with the subject matter as detailed in paragraph 10 hereinabove;

- (v) to provide that in the event of the Director (I & L) RDSO, Kolkata failing to provide the originals of the documents annexed as the Annexure “A” and “B” hereto or to produce a competent witness to give evidence with regard to the said documents of the subject matter as detailed in paragraph 10 hereof and in the event of his/their refusing to give evidence, they shall be held guilty of contempt of the Arbitral Tribunal and shall be subject to such penalty and punishment as such acts and contempt might warrant;
- b) Such further or other order or orders be made and/or direction or directions be given as to this learned Tribunal may seem fit and proper.”

7. Learned Tribunal passed the order dated 16.04.2019 and the operative part of the order reads as under :-

“The Tribunal has considered the prayer. The Tribunal is of the considered view that it would not be appropriate for it to apply to the Court for assistance in taking evidence. However, the Respondent – Applicant is permitted to apply to the concerned Court for assistance in taking evidence as detailed in its application under Section 27 of the Act and the Tribunal accords its approval therefor.”

8. The petitioner had though made a prayer to Arbitration Tribunal for filing application to the Hon'ble High Court of Calcutta for taking assistance in recording of evidence as prayed for in the application. On perusal of the order of the Arbitral Tribunal, it is clear that this prayer for taking assistance of High Court of Calcutta was declined by the Arbitral Tribunal and the petitioner was permitted to file an application under Section 27 of the Act, 1996 before the Court concerned, which has to be read separately and the other part of the

of the order is regarding taking assistance for recording evidence as it is detailed in the application under Section 27 of the Act, 1996, has to be read separately. Therefore, the “concerned Court” mentioned in the order of the Arbitral Tribunal does not appear to be connected with other part of the order, which is regarding taking assistance in recording of evidence. According to Clause 29 (2) of the agreement, it has been agreed between the parties that the jurisdiction regarding arbitral disputes shall be with the Court of District Judge at Korba.

9. Sub-Section 1 of Section 27 of the Act, 1996 provides that Arbitral Tribunal, or a party with the approval of the Arbitral Tribunal, may apply to the Court for assistance in taking evidence.
10. The word “Court” that finds mentioned in Section 27 of the Act, 1996 has not been separately defined or explained in the whole provision of Section 27 of the Act, 1996, therefore, the Court, which is defined under Section 2 (i) (e) of the Act, 1996 shall be the Court meant for the purpose of Section 27 of the Act, 1996. The provision under Section 2 (i) (e) of the Act, 1996 gives jurisdiction to Principal Civil Court of original jurisdiction in a district as agreed between the parties, the said District is Korba in the State of Chhattisgarh.
11. On the basis of the discussion made hereinabove, it is held that the learned Arbitral Tribunal has not restrained the petitioner from filing any application before the Court of District Judge at Korba. The mention of word “concerned Court” has to be interpreted as it is within the meaning of agreement between the parties and the provisions of the Act, 1996 i.e. the Court of District Judge at Korba. The other part of the order of the Arbitral Tribunal is regarding the mode of taking assistance of the Court, hence, it was not at all binding upon the

petitioner to make a prayer to the High Court of Calcutta for taking such assistance. The learned District Judge has committed an error in interpreting with the directions of the Arbitral Tribunal to take assistance of High Court of Calcutta, hence, the order so passed is erroneous and against the provisions of Act, 1996.

12. After due consideration, the petition is allowed. The impugned order dated 25.07.2019, passed by the District Judge, Korba is set-aside and the application filed by the petitioner under Section 27 of the Act, 1996 is allowed. The learned District Judge is directed to provide assistance to the petitioner in taking evidence in the mode and the manner as prayed for in the application.
13. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge