

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 31 of 2018**

- M/s D.D. Enterprises through its Proprietor Anil Arora, S/o Prithviraj Arora, aged about 48 years, having its registered office at Plot No. 109 D, Sector-B Industrial Area, Sirgitti, Bilaspur C.G.

-----Appellant**VERSUS**

- M/S JMS Mining Services Pvt. Ltd. Asyst Park, 2nd Floor, G.N. 37/1 Salt Lake Sector-V Kolkata- 700091 W.B.

Registered office at- Simplex House 27, Shakespear Sarani Kolkata 700017

-----Respondents

For Appellant	:	Mr. Y.C. Sharma, Advocate and Mr. Rajeev Shrivastava, Advocate
For Respondent	:	Mr. Kasif Shakeel, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per P.R. Ramachandra Menon, CJ.****13/01/2020**

1. The matter is listed before this Court referring to the settlement of the dispute between the parties, pursuant to the steps taken on mediation. The case history shows that an award was passed on 25-06-2016 in favour of the appellant by the Micro and Small Enterprise Facilitation Council, Raipur, in terms of the provisions of Micro, Small and Medium Enterprises Development Act, 2006, whereby a total sum of Rs. 3,49,76,954.00 (Rs. Three Crore Forty Nine Lac Seventy Six Thousand Nine Hundred Fifty Four) including the interest was ordered to be satisfied.
2. In the course of further proceedings, an application was preferred by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 for securing the awarded amount, but the Commercial Court as per order dated

04-04-2017 rejected the said application stating that the said proceeding was beyond the territorial jurisdiction of the Court. This is sought to be challenged by filing this appeal where there is a delay of 426, days which is sought to be condoned by filing an application. The respondent has filed its return.

3. When the matter came up for consideration before this Court, after taking note of the pleadings and prayers and the submissions made across the bar, it was required on 01-10-2019 to ascertain whether the matter could be settled out of this Court, with the assistance of a trained mediator. Based on the submissions made by the learned counsel for the parties, the parties were required to be present before this Court on the next date of posting. Accordingly, they were present on 15-10-2019, when the parties were relegated to appear before the Nodal Officer on that day itself for mediation.
4. The dispute was mediated with the effective involvement of Mr. R.S. Marhas (Mediator) and it is now reported by the Mediator that the issue has been settled between the parties. Settlement agreement executed by the parties and counter signed by the Mediator on 19-12-2019 has also been placed as part of the record. We find it appropriate to record the entire 'Settlement Agreement' dated 19-12-2019 as part of this judgment to have clarity.

"Settlement Agreement"

1. This agreement is being executed on this 19th day December 2019 at Mediation Centre, Chhattisgarh High Court, Bilaspur, Chhattisgarh

between

2. M/s. DD Enterprises, Through its Proprietor Shri Anil Arora, S/o Shri Prithviraj Arora, Aged about 48 years, Plot No. 109-D, Sector -B, Industrial Area, Sirgitti, District Bilaspur, Chhattisgarh, through power of attorney holder, Shri Vijay Arora, S/o Shri Prithviraj Arora, R/o Behind Patidar Bhawan, Mungeli Road, Bilaspur hereinafter referred to as the Party No. 1

And

3. M/s. JMS Mining Private Limited (Formerly known as JMS Mining Services Private Limited)

Through Shri Ganesh Gupta, Chief Manager, Finance, JMS Mining Private Limited, Dongfang Building, Premises No. 16, MAR1111, AA-1A, New Town Rajarhat, Kolkata, 700163 (Formerly at Asyst Park, 2nd Floor, G.N.-37/1, Salt Lake, Sector-V, Kolkata, 700091, WB) hereinafter referred to as the Party No. 2

4. Whereas the Arbitration Appeal No. 31 of 2018 pending before the Hon'ble High Court of Chhattisgarh between the parties was referred to mediation and was allotted to the Mediator undersigned vide letter dated 15/10/2019 and whereas the parties have appeared for the mediation proceedings held on 15/10/2019, 11/11/2019, 23/11/2019 and 03/12/2019 and have arrived at a settlement with regard to all the cases pending between them, details of which are being mentioned herein below, and shall have the effect of settling all the disputes between them

And

5. Whereas during the course of mediation proceedings it was also pointed out that there are several other litigations pending between the sister concerns of the Party No. 1, namely M/s. Radha Vallabh Industries, represented by Partner Shri Vijay Arora, Plot No. 113, A & B, Sector – B, Sirgitti Industrial Area, Bilaspur; Steel Experts, represented by Proprietor Shri Vijay Arora, Plot No. 10, Chainpur Industrial Area, Manendragarh; and Arora Fabricators, through its Proprietor Shri Dharendra Arora S/o Shri Prithviraj Arora, Aged about 56 years, Plot no. 11, Chainpur Industrial Area, Manendragarh, through Power of Attorney holder Shri Vijay Arora, and the Party No. 2, with regard to which three other disputes are pending in Barasat District Courts, Kolkata High Court and Raipur District Court

And

6. Whereas during the course of mediation proceedings, the parties also agreed to come to a settlement with regard to those pending matters as well

And

7. Now therefore, the Party No. 2, has agreed to pay to Party No. 1 a sum of Rs. 3,12,60,413.00 (Rs. Three Crores Twelve Lakhs Sixty Thousand and Four Hundred and Thirteen) which will have the effect of settling all litigations pertaining to agreement dated 04/03/2014 with regard to which Arbitration Appeal No. 31 of 2018 is pending before the High Court of Chhattisgarh while CO No. 3247/2019 and EC No. 69/2018 are pending before Calcutta High Court, and Miscellaneous Case No. 117/2017 pending before the Commercial Court, Kolkata which was transferred

from Barasat District Court. On execution of this Settlement Agreement, all these cases between the parties will be disposed of upon the parties informing the concerned courts about the settlement by filing appropriate applications. The amount of Rs. 3,12,60,413.00 (Rs. Three Crores Twelve Lakhs Sixty Thousand and Four Hundred and Thirteen) will be paid to the Party No. 1 by Party No. 2 in 12 instalments in the form of Post Dated Cheques. Eleven Cheques valuing Rs. 26,05,034.00 (Rs. Twenty Six Lakhs Five Thousand and Thirty Four Only) and Twelfth Cheque valuing Rs. 26,05,039.00 (Rs. Twenty Six Lakhs Five Thousand and Thirty Nine Only) payable on and from 20/01/2020 to 20/12/2020 drawn in the name of DD Enterprises payable at Standard Chartered Bank, Shakespeare Sarani, Kolkata

8. Similarly, the sister concern of Party No. 1, i.e. Radha Vallabh Industries, and Party No. 2 have four litigations pending with regard to purchase order dated 27/08/2014 which are Miscellaneous Case No. 116 of 2017 pending before Barasat District Court, CO No. 3246/2019 and EC No. 76/2018 pending before Calcutta High Court while Arbitration Case No. 29/2016 pending before Raipur District Court, are being finally settled for an amount of Rs. 17,94,524.00 (Rs. Seventeen Lakhs Ninty Four Thousand Five Hundred and Twenty Four) which will be paid by Party No. 2 to Radha Vallabh Industries in eleven equal instalments each of Rs. 1,49,544.00 (Rs. One Lakh Forty Nine Thousand Five Hundred and Forty Four Only) and twelfth instalment of Rs. 1,49,540.00 (Rs. One Lakh Forty Nine Thousand Five Hundred and Forty Only) payable on and from 20/01/2020 to 20/12/2020 drawn in the name of Radha Vallabh Industries payable at Standard Chartered Bank, Shakespeare Sarani, Kolkata

9. Similarly, the other sister concern of Party No. 1, i.e. Steel Experts, and Party No. 2 have three litigations pending with regard to purchase order dated 27/08/2014 which are Miscellaneous Case No. 118 of 2017 pending before Barasat District Court, CO No. 3249/2019 pending before Calcutta High Court while Arbitration Case No. 28/2016 pending before Raipur District Court, are being finally settled for an amount of Rs. 3,34,692.00 (Rs. Three Lakhs Thirty Four Thousand Six Hundred and Ninety Two) which will be paid by Party No. 2 to Steel Experts in Twelve equal instalments each of Rs. 27,891.00 (Rs. Twenty Seven Thousand Eight Hundred and Ninety one Only) payable on and from 20/01/2020 to 20/12/2020 drawn in the name of Steel Experts payable at Standard Chartered Bank, Shakespeare Sarani, Kolkata

10. Similarly, yet another sister concern of Party No. 1, i.e. Arora Fabricators, and Party No. 2 have four litigations pending with regard to purchase orders dated 28/06/2014, 27/08/2014 and 08/09/2014 which are Miscellaneous Case No. 119 of 2017 pending before Barasat District Court, CO no. 3248/2019 and EC No. 68/2018 pending before Calcutta High Court while Arbitration Case No. 30/2016 pending before Raipur District Court, are being finally settled for an amount of Rs. 16,10,371.00 (Rs. Sixteen Lakhs Ten Thousand Three Hundred and Seventy One Only) which will be paid by Party No. 2 to Arora Fabricators in eleven equal instalments each of Rs. 1,34,198.00 (Rs. One Lakh Thirty Four Thousand One Hundred and Ninety Eight Only) and twelfth instalment of Rs. 1,34,193.00 (Rs. One Lakh Thirty Four Thousand One Hundred and Ninety Three Only) payable on and from 20/01/2020 to 20/12/2020 drawn in the name of Arora Fabricators payable at Standard Chartered Bank, Shakespeare Sarani, Kolkata

11. Now, therefore, Party No. 2 has handed over all 48 (Forty Eight) Post Dated Cheques as mentioned above, to Shri Vijay Arora, in full and final settlement of all pending litigations mentioned above. The 'C' Forms of all transactions between the parties are also being handed over to Shri Vijay Arora by Party No. 2 under a receipt from him in acknowledgement thereof, Party No. 1 undertakes that he shall immediately apply for obtaining 'E-1' Form and as soon as he gets the same, he shall immediately hand over the same to Party No. 2 or have it delivered to them by Speed Post/Courier. It is agreed by the parties that in case of default in exchange of these forms the concerned party would be liable for the difference of tax amount, if any.

12. The original Advance Bank Guarantee bearing No. 2013/86 submitted by Party No. 1 for an amount of Rs. 22,35,900.00 having validity up to 30/06/2020 has been handed over to Shri Vijay Arora.

13. As a consequence of this Settlement Agreement all the claims of parties against each other with regard to aforesaid litigations shall stand settled, satisfied and discharged and they shall not have any dispute or any other further claim in this regard, whatsoever. In case parties do not adhere to and abide by the terms settled herein they shall be at liberty to take recourse available in accordance with law.

14. In witness to this Settlement Agreement the parties hereto have put their hands on the date aforementioned.

sd/-
Authorised Signatory
for Party No.1
DD Enterprises,
Radha Vallabh Industries

sd/-
Authorised Signatory
for Party No.2
JMS Mining Private Limited

Signed before me
sd/-
(RANBIR SINGH MARHAS)
MEDIATOR

5. In view of the above turn of events, the appeal is disposed of as settled out of Court. The efforts taken by the parties, their lawyers and the steps taken by the Mediator stand appreciated.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge