

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 25237 of 2014

***Shark Mines and Minerals
Pvt. Ltd.***

.....

Petitioner

Mr. Tanmay Mishra, Advocate

Vs.

***Odisha Mining Corporation
Ltd.***

.....

Opposite Party

Mr. P.K. Muduli, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

04.07.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr.T. Mishra, learned Counsel appearing for the Petitioner and Mr. P.K. Muduli, learned Counsel appearing for the Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the order of forfeiting the commitment amount of the petitioner amounting to Rs.3,81,000/- under Annexure-3 and 5 and to direct the Opposite Parties to refund the said commitment amount to the petitioner within a stipulated period.

4. Mr. T. Mishra, learned Counsel appearing for the Petitioner contended that the Petitioner entered into a contract with the Corporation/opposite party, pursuant to which Contract Confirmation was made. As per Clause-9 (ii) of the said Contract Confirmation if the buyer (agency) will fail to lift 80% of the allotted quantity within the stipulated period i.e. by 30.06.09, the commitment amount of Rs.3,81,000/- deposited with OMC will be forfeited without any correspondence. However, at Clause-11 of the Contract Confirmation it has been provided that in the event of any dispute, the decision of

Managing Director, Orissa Mining Corporation Limited shall be final. Accordingly, he made an application before the Managing Director, Orissa Mining Corporation Limited on 07.05.2012. However, without considering the same the order dated 05.09.2014 under Annexure-5 was passed.

5. Mr. P.K. Muduli, learned Counsel appearing for the OMC contended that since the Petitioner has not adhered to the provision contained in Clause-9 (ii) of the Contract Confirmation, the order impugned passed in forfeiting the amount, is well justified, and as such, no illegality or irregularity has been committed by the authority by passing the order impugned.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Contract Confirmation was made between the Petitioner and Opposite Parties. Clause-9(ii) of the Contract Confirmation under the heading Commitment Amount reads thus:-

“9 (ii) If the buyer (agency) will fail to lift 80% of the allotted quantity within the stipulated period i.e. by 30.06.09, the commitment amount of Rs.3,81,000/- deposited with OMC will be forfeited without any correspondence”.

Clause-11 of the said Contract Confirmation speaks about Dispute to the following extent:-

“Dispute: In the event of any dispute, the decision of Managing Director, Orissa Mining Corporation Limited shall be final.

7. In view of the above, without expressing any opinion on the merits of the case itself, this Court disposes of the Writ Petition giving liberty to the Petitioner to raise the dispute before the Managing Director, Orissa Mining Corporation Limited within a period of two weeks from today and in case such a dispute is raised, the Managing Director, Orissa Mining Corporation Limited shall

dispose of the same, as expeditiously as possible, preferably within a period of four months from the date of raising of such dispute.

8. With the above observation the Writ Petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE

