

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16751 of 2013

CEAT Ltd., Bhubaneswar

.... Petitioner

Mr. R. Achary, Advocate

-versus-

***M/s. Mahanadi Coalfields Ltd and
others***

.... Opposite Parties

Mr. N.C. Sahoo, Advocate (for O.Ps.)

CORAM:

**DR. JUSTICE DR. B.R. SARANGI
MR. JUSTICE S.K. PANIGRAHI**

ORDER

05.01.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The petitioner has approached this Court to quash the letter dated 21/22.12.2010 under Annexure-3 relating to forfeiture of E.M.D. amount and to issue direction to the opposite parties to release the E.M.D. amount along with interest in favour of the petitioner.
3. Mr. R. Achary, learned counsel appearing for the petitioner contended that the non-production of document has rendered the EMD amount forfeited by the authority and the same has been indicated in the letter dated 21/22.12.2010 in Annexure-3.
4. Mr. N.C. Sahoo, learned counsel appearing for the opposite parties contended that the forfeiture of E.M.D. amount has been done in consonance with the terms of agreement made between

the parties as per the e-Tender Notice dated 17.07.2010. In accordance with clause 25(C) of e-Tender Notice dated 17.02.2010, the petitioner had to produce certain documents, which it failed to comply with. The indicated non-compliance has resulted in the forfeiture of the agreement under clause-28. Further, due to the availability of an alternative remedy in the agreement, the petitioner cannot invoke writ jurisdiction of this Court under Article 226 of the Constitution.

5. Having heard learned counsel for the parties and on perusal of the record, it appears that the clause-22 of the agreement provides for Arbitration, which reads as follows:

“22. Arbitration

In case of any dispute or difference between the parties as to the construction, effect or application of these presents of any term or provision thereof or as to the amount or extent of any liability hereunder or as to any matter or thing in any way arising in connection with this contract, the same shall be referred to the Arbitrator or Arbitrators to be appointed by the mutual consent of both parties after consultation with one another, and the provisions of the Indian Arbitration Act for the time being in force shall apply to the arbitration proceedings and the award shall be binding on both parties. For orders placed with foreign supplies/manufacturers, arbitration by International Chamber of Commerce, Geneva shall be specified.”

6. In view of such position, Mr. R. Acharya, learned counsel appearing for the petitioner, at this stage, submits that the petitioner may be permitted to invoke the Arbitration under clause-22 of the agreement itself.

7. With such liberty, the writ petition is disposed of.

8. Urgent certified copy of this order be granted as per rules.

pcd



(DR. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge