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ARB. O.P. (Com. Div.) No.215 of 2023 and O.A. No.364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2023

Pronounced on :16.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**ARB. O.P. (Com. Div.) No.215 of 2023
and O.A. No.364 of 2023**

M/s.Anand Granites Exports Private Ltd.,

Rep. by its Authorised Signatory

Kadapa Moulali Sahib

...

Petitioner

vs.

Prabhudayal Agrawal

...

Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 34 of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Agreement, dated 18.03.2010.

For petitioner

: Mr. P.V. Balasubramaniam

Senior Counsel

for M/s.BFS Legal

For respondent

: Mr. Akash Singh

COMMON ORDER

The preliminary issue that arises for consideration in this matter is whether part of cause of action for filing these applications arose within the jurisdiction of this Court and even if part of cause of action had



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arisen, whether this Court is having the "forum conveniens" for adjudicating these applications.

O.A. No.364 of 2023 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for an order of injunction to restrain the respondent from in any manner disturbing or interfering with the day to-day administration of the applicant with regards the Raising Contract Agreement, dated 18.03.2010 entered into between the petitioner and the respondent.

Arb. O.P. (Com. Div.) No.215 of 2023 has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator to adjudicate the disputes between the petitioner and the respondent arising out of the Raising Contract Agreement, dated 18.03.2010.

2.Since both the Section 9 Application and the Section 11 petition arise out of the same Raising Contract Agreement dated 18.03.2010, they are disposed of by a common order.

3.Under the Raising Contract Agreement, dated 18.03.2010, the respondent is having a mining lease over the area of 262.27 Acres or



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106.128 Hects., situated at Tantra (Khata No.35), Rengua (Khata No.31) and Bandhal (Khata Nos.30 and 39) Villages under Bonau Sub Division of Sundargarh District in Orissa.

4.The petitioner/applicant has been appointed by the respondent as the Managing Agent under Rule 8(A) of Metalliferous Mines Regulation, 1961, to excavate Bauxite and other minerals from the aforementioned lands, under the Raising Contract Agreement, dated 18.03.2010. According to the petitioner, pursuant to the Raising Contract Agreement, dated 18.03.2010, they have invested more than Rs.14 crores. In the affidavit filed in support of O.A. No.364 of 2023 and the petition in support of Arb. O.P. (Com. Div.) No.215 of 2023, they have stated as follows:

a) They have discharged the dues of M/s.Gayatri Mining Pvt. Ltd., who had earlier entered into a similar Raising Contract with the respondent;

b) They have discharged the dues of M/s.Anjani Cotton Pvt. Ltd., who had entered into a Joint Venture agreement with the respondent;

c) Both M/s.Gayatri Mining Pvt. Ltd., and M/s.Anjani Cotton Pvt.



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Ltd., were unable to obtain the statutory permits;

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d) The respondent executed a Tripartite Agreement with M/s.Gayatri Mining Pvt. Ltd. and the applicant / petitioner, wherein the applicant / petitioner will have to pay a sum of 14 Crores to M/s.Gayatri Mining Pvt. Ltd., which the respondent owes them;

e)The major portion of the aforesaid payments were made from Chennai by the applicant /petitioner. The Corporate Office of the applicant /petitioner is at Nungambakkam, Chennai;

f) The seat of arbitration is not fixed in the arbitration clause contained in the Raising Contract Agreement, dated 18.03.2010;

g) Since a part of cause of action arose at Chennai, this Court is having the jurisdiction to appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 and is having the jurisdiction to decide the Section 9 Application.

5. The petitioner with regard to the merits of the dispute with the respondent states as follows :-

a)The Irrevocable Power of Attorney, dated 10.05.2010 (hereinafter referred to as "IPOA") has been executed by the respondent



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in favour of Mr.S.B.Gowtam to carry out all the activities including but not limited to the statutory clearances, related to the mines on his behalf for the mines M/s.Tantra Bauxite Mine (Tantra, Rengua & Bhandal Village);

b) Mr.S.B. Goutam is a representative of the applicant / petitioner;

c)The applicant / petitioner has invested substantial sums of monies to the tune of several Crores, ever since the date of the Raising Contract Agreement, dated 18.03.2010 and that the applicant / petitioner continues to incur expenditure;

d) The respondent has also executed an affidavit dated 10.05.2010 to permit the Government to transfer the Mining Lease in favour of the applicant / petitioner on taking Rs.15 lakhs as consideration amount for mining expenses;

e) The aforesaid IPOA and the affidavit was obtained only in view of the Interim report, dated 26.04.2010 of the Central Empowered Committee recommendation in compliance with the directions of the Hon'ble Supreme Court, to comply with the environmental laws and other allied rules i.e., Mining Plan, Environment Clearance, Pollution Board Consent, Net present value for entire Forest Land, Compensatory afforestation fund;



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f) Only to avoid financial risks, the affidavit dated 10.05.2010 was executed by the respondent in favour of the applicant / petitioner;

g) The applicant / petitioner was forced to make NPV payment of Rs.7.74 Crores to the Central Governmental authorities on 30.07.2010, which ought to have been paid by the respondent;

h) Clause 3 of Raising Contract Agreement, dated 18.03.2010 states that the agreement is valid till the ultimate end of the mining lease which includes any renewal and or revival periods or till the complete exhaustion of the detected mineral deposited in the leasehold lands;

i) The respondent is aware of the huge payments made by the applicant / petitioner for obtaining statutory clearances for doing mining operations in the lands owned by the respondent;

j) The mining leasehold rights granted to the respondent by the Government expired on 07.07.2011. As the mining leasehold rights got lapsed, the applicant / petitioner has initiated the process for extension of the mining rights of the said lands by approaching the Revision Authority, Ministry of Mines, New Delhi seeking to set aside the lapsing order of the State Government on 11.05.2016;

k) There was a change in the Government policy relating to the mining leasehold rights due to the amendment in MMDR Act, 1947



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notified in 2015, whereby there are possibilities of the project lease being extended for a period of 50 years i.e., till 07.07.2041;

l) In view of the new amendment in Mineral Policy, the respondent with a malafide view to extort more monies and in an attempt to harass and hinder the applicant / petitioner from obtaining leasehold rights and other approvals has proceeded to illegally cancel the IPOA granted to Mr.S.B.Goutam with a view to disturb and cause hindrance to the applicant / petitioner from obtaining the leasehold rights and other approvals;

m) The respondent after a period of 13 years had issued a letter on 18.11.2022 to Mr.S.B.Goutam, threatening to terminate the IPOA to which replies were also sent;

n) The respondent and M/s.Earth & Environment have changed the Department of Mines and Steel, Environment & Forest Clearance-Parvesh portal, IBM - Department of Mines & Odisha State Pollution Control Board online portal Password for registered User IDS for Tantra Bauxite Mine lease is changed for the related department user ID without any consent from the applicant / petitioner, making it difficult and to comply or know the issue, which the applicant was fulfilling since the



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year 2010, upto 18.11.2022. The access to the said online portal is vital for obtaining the permits and approvals. Due to the said acts of the respondent in changing its password and other login credentials, severe hurdles were caused to the applicant / petitioner. The respondent had done these acts with malafides and with the intention to cause further hindrances to the applicant / petitioner in accessing the said portal;

o) The Respondent after a lapse of 13 years is now making objections against his own authorized legal representative, who was performing the duties and responsibility as per the IPOA/ Mines and Minerals Act and Rules;

p) The Respondent has also filed O.S. No. 2703/2022, before the Civil Judge (Senior Division) Bhubaneswar seeking to cancel the IPOA dated 10.05.2010 issued to Mr.S.B.Goutam. The respondent is a notorious and vexatious litigant, who has initiated several legal proceedings, which are as follows :-

S.No	Particulars of the Case	Status
1.	W.P. No.28227 of 2022 filed by the Respondent before the Hon'ble High Court of Orissa to issue notice to the Opposite Parties and to direct the Opposite Party No.1 therein to drop the proceedings initiated under Rule 20(1) of the Mineral Concession Rule, 2016	Disposed on 18.11.2022



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2.	W.P. No.32854 of 2022 filed by the Respondent before the Hon'ble High Court of Orissa to issue Rule- Nisu in the nature of a Writ of Certiorari or any other Writ and to quash the incorporation certificate of the Opposite Party No.3 therein	Disposed on 05.13.2022
3.	W.P. No.9549 of 2022 filed by the Respondent before the Hon'ble High Court of Orissa to Rule- NISI in the nature of a writ of Certiorari or any other Writ(s), failing upon the Opposite Parties to show cause and to quash the impugned notice dated 21.03.2023 with Annexure-4 of Opposite Party No.1 and issue a fresh notice exclusively to the Petitioner Only.	Disposed on 31.03.2023
4.	W.P. No. 13438 of 2022 filed by the Respondent before the Hon'ble High Court of Orissa to quash the order of the ROC issued against the complaint made by the Respondent in view of the direction issued by the Honorable High Court in W.P. No. 32854 of 2022.	Disposed on 21.04.2023
5.	I.A. No 1 in O.S No. 2023 of 2022 2022 filed by the Respondent before the Hon'ble Civil Judge Court of Bhubaneshwar Orissa seeking Injunction Order against the IPOA dated 10.05.2010 was rejected. (ad interim ex-parte orders under XXXIX Rule 3 of CPC bearing I.A. No. 01/2022)	Disposed on 06.13.2023
6.	CMP No. 371 of 2023 filed by the Respondent before the Hon'ble High Court of	Pending



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Orissa, challenging the Order dated 25.02.2023 passed by Civil Judge (Senior Division) Bhubaneswar.	
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q) The Applicant / Petitioner has accrued rights and interest in the lease hold area under the Registered Irrevocable Power of Attorney and Agreements, which are still subsisting under law, which has neither been stayed nor annulled by a Court of law;

r) The applicant / petitioner having invested huge sums of monies aggregating to several Crores of rupees, towards the mining activities in pursuance of the said Agreements entered into with the respondent should be protected pending disposal of the arbitration with regards to the rights arising out of the Raising Contract Agreement, dated 18.03.2010. The respondent has been sending unscrupulous communications to the government authorities stating that IPOA granted by him in favour of Mr.S.B. Goutam is cancelled and hence, any communications with regards to the mines have to be sent only to him alone. This has caused severe hindrances to the process of obtaining statutory approvals and permits and also, has caused issues for the Applicant/Petitioner from complying with the laws such as filing of necessary returns;



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s) Under the Raising Contract Agreement, dated 18.03.2010, one

of the named Arbitrators viz., Mr.K.Sreenivasulu Reddy, Chartered Accountant is based at Chennai. The representations, assurances, meetings, negotiations and other crucial discussions had taken place in Chennai at the Corporate Office of the applicant / petitioner at Nungambakkam, Chennai. The monies were also disbursed by the applicant / petitioner from Chennai and more particularly from Nungambakkam branch of the Indian Overseas Bank in Chennai. The notice invoking the Arbitration clause was issued by the applicant / petitioner from Chennai and email communications were also issued by the applicant / petitioner from its Chennai office. Since the major part of cause of action has arisen within the jurisdiction of this Court and the arbitration clause does not name the seat of the arbitration, this Court is having the jurisdiction to adjudicate both the applications;

t) The respondent is estopped from raising the issue of jurisdiction as the respondent through his counsel has acquiesced to this Court's jurisdiction through an undertaking given by him on behalf of the respondent not to send any form of communication and / or to interrupt from the statutory process and the same was recorded by this Court vide its Order dated 28.04.2023 passed in O.A. No.364 of 2023. The said



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undertaking was further extended by this Court on the subsequent hearings in the said matter.

6) A counter affidavit has been filed by the respondent stating as follows -

a) The Mining Lease upon the mining area is situated at Tantra (Sundargarh District), Orissa and was initially granted to one Mr.Ram Chandran. The Mining Lease was in operation for the period of 08.07.1991 to 07.07.2011. The said Mining Lease was transferred to respondent on 25.01.2002 after the respondent cleared certain statutory dues of Mr.Ram Chandran in favour of Government of Orissa;

b) The respondent entered into a Raising Contract Agreement, dated 18.03.2010 with the applicant / petitioner. The scope of the Agreement was that the petitioner shall carry out raising and mining operations on the mine as an agent. In lieu of the same, the respondent was bound to pay Rs.100 per MT to the petitioner for the raising work. On 10.05.2010, the respondent executed an IPOA in favour of Mr.S.B. Goutam to look after several business affairs of the respondent. Notably, the respondent's health was not up to the mark and resultantly he took a much dormant role in his business by reposing extreme trust on his POA



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(Power of Attonery) holder. The IPOA granted in favour of Mr.S.B.

Goutam is a separate legal document alien to the Agreement. Mr.S.B.

Goutam is not a party to the Raising Contract Agreement, dated 18.03.2010 and hence any dispute between the present respondent and Mr.S.B.Goutam is not an arbitral dispute. The arbitration proceedings is confined to the four corners of the Raising Contract Agreement, dated 18.03.2010. Thus, the IPOA, dated 10.05.2010 granted in favour of

Mr.S.B.Goutam is an alien document to the Raising Contract Agreement, dated 18.03.2010;

c) The applicant / petitioner ought to have stated the details of the IPOA granted in favour of Mr.S.B.Goutam and therefore, the applicant / petitioner now at a belated stage cannot file these applications. In the absence of any details of any meeting at Chennai, the averment that the major part of cause of action arose at Chennai false flat. No meeting pertaining to Raising Contract Agreement, dated 18.03.2010 which is the subject matter to the dispute took place at Chennai;

d) The applicant / petitioner has belatedly filed a bulky statement of the bank without filing any affidavit or explanation as to what these transaction pertain to. Be that as it may, these are transactions between



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Mr.S.B.Goutam and the applicant and the same is beyond the scope of arbitration. As per the agreement, the respondent have to pay the applicant in lieu of the Raising Contract Agreement, dated 18.03.2010 and not viceversa;

e) Thus several payments made to Mr.S.B. Goutam by the applicant have no relevance in this case. There was no obligation in the Raising Contract Agreement, dated 18.03.2010 which binds the applicant / petitioner to pay the respondent, infact it was vice versa. The respondent had to pay the applicant / petitioner in case they carried out raising operations on the mine. Since the same was never carried out, there is no payment to be made by the respondent in relation to the Raising Contract Agreement, dated 18.03.2010;

f) Thus there is no payment made in relation to the agreement in question from Chennai and hence there is no part of cause of action arising at Chennai.

7) From the contentions of the respondent as seen from his counter affidavit, the following issues have been raised:

a) Both the petition as well as the application is not maintainable



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on account of lack of jurisdiction for this Court to decide;

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b) The Courts having territorial jurisdiction over the seat shall be the Court which will have jurisdiction as per Section 2 (1)(e) of the Arbitration and Conciliation Act, 1996;

c) Chennai is not the seat of arbitration and when no cause of action arose at Chennai, this Court does not have the jurisdiction to decide these applications. The relief sought in O.A. No.364 of 2023 is beyond the scope of Section 9 of the Arbitration and Conciliation Act, 1996;

d) There is no arbitral dispute disclosed by the applicant for invocation of reliefs under Section 9 of the Arbitration and Conciliation Act, 1996. The applicant / petitioner necessarily will have to prove that

- i. There is a good prima facie case;
- ii. balance of convenience is in favour of the applicant;
- iii. irreparable loss will be caused to the applicant, if injunction is not granted in favour of the applicant.

e) The applicant / petitioner has not satisfied any of the aforementioned requirements for grant of an order of injunction;

f) Execution of Power of Attorney in favour of Mr.S.B.Goutam was a separate action required for getting the mining lease in favour of



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the applicant. However, the same cannot be tagged in the present arbitration;

g) The Raising Contract Agreement, dated 18.03.2010 does not mandate that the respondent is bound to co-operate with a third party;



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h) It is the respondent who had suffered loss due to non functioning of the mines. The applicant / petitioner has been impleaded as a party respondent in the suit filed by the respondent before the Orissa Court seeking for revocation of Power of Attorney granted in favour of Mr.S.B. Goutam. Thus, any grievance of the applicant / petitioner will be duly addressed there. Hence, the balance of convenience is also not in favour of the applicant for grant of injunction;

i) The applicant/petitioner has failed to show as to what irreparable loss is caused to them suddenly after ten years of lapse of lease. Application under Section 9 of the Arbitration and Conciliation Act, 1996 as well as the petition under Section 11 of the Arbitration and Conciliation Act, 1996 are barred by law of limitation. Since the applicant / petitioner has slept over his rights arising out of the Raising Contract Agreement, dated 18.03.2010 the question of granting injunction in their favour will not arise.



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Submissions of the Counsels:

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8) Heard Mr.P.V. Balasubramaniam, learned Senior Counsel for the applicant /petitioner and Mr.Akash Singh, learned Senior Counsel assisted by Ms.Anusha Peri appearing for the respondent.

9) Both the learned Senior Counsel for the applicant /petitioner as well as the learned counsel for the respondent by drawing the attention of this Court to various documents filed by the respective parties would reiterate the respective contentions of the applicant / petitioner and the respondent which have been narrated in the earlier paragraphs.

10) In support of the applicant / petitioner's contentions that this Court has got the jurisdiction to decide these applications and the injunction relief sought for in O.A. No.364 of 2023 is maintainable, the learned Senior Counsel for the applicant / petitioner relied upon a decision of the Hon'ble Supreme Court in the case of **BBR (India) (P) Ltd., v. S.P. Singla Constructions (P) Ltd., reported in 2023 1 SCC 693** and would submit that when the seat of arbitration has not been fixed, the



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Court in which a part of cause of action arises can exercise jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996.

11) In support of the contentions of the respondent, with regard to the maintainability of the relief in Arb.O.P. (Com. Div.) No.215 of 2023 and O.A. No.364 of 2023, the learned counsel for the respondent has relied upon the following authorities :

a) *BBR (India) (P) Ltd., v. S.P. Singla Constructions (P) Ltd., reported in 2023 1 SCC 693* ;

b) *Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel India Ltd., reported in 2022 SCC Online SC 1219;*

c) *KSS KSSIPL Consortium v. GAIL (India) Ltd., reported in 2015 4 SCC 210.*

d) *Duro Felguera S.A. v. Gnangavaram Port Ltd. reported in (2017) 9 SCC 729;*

e) *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc. reported in (2013) 1 SCC 641;*

f) *Cox & Kings Ltd. v. SAP India (P) Ltd. reported in (2022) 8 SCC 1 51;*



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Discussion :

The details of the only documents relied upon by the petitioner/applicant for filing these applications before this Court and their place of execution are as follows:

Nature of Document	Address of the parties disclosed	Place of execution or Place of origin
Raising Contract Agreement dated 18.03.2010	Address of the applicant: 58-12-2, Municipal High School Road, Santhapeta, Ongole, Prakasam District, Andhra Pradesh Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha	Bubaneswar, Odisha
Irrevocable Power of Attorney dated 10.05.2010 executed by the respondent in favour of Mr.S.B.Goutam	Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha Address of Mr.S.B.Goutam: 58-12-2, Municipal High School Road, Santhapeta, Ongole, Prakasam District, Andhra Pradesh	Odisha
Affidavit dated 10.05.2010 executed by the respondent proposing to transfer the Mining Lease in favour of the applicant	Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha	Bubaneswar, Odisha
Lapsing Order dated 29.09.2015 passed by the Government of Odisha, Steel and Mines Department	-	Odisha
Show Cause Notice dated	Address of the respondent: B.N.Lal	Odisha



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Nature of Document	Address of the parties disclosed	Place of execution or Place of origin
17.10.2022 issued by the respondent to Mr.S.B.Goutam for cancelling his Power of Attorney dated 10.05.2010	House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha Address of Mr.S.B.Goutam: Near Jagannath Mandir, Thana Chowk, Koira District: Sundargarh, Odisha	
Letter dated 08.11.2022 sent by the respondent to the Director of Mines, Odisha requesting them not to entertain Mr.S.B.Goutam, the Power Agent with regard to the subject Mining Lease	Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha	Odisha
Tantra Bauxite Mine represented by Mr.S.B.Goutam's letter to the respondent requesting for withdrawal of the Show Cause Notice issued by the respondent	Address of Tantra Bauxite Mine represented by Mr.S.B.Goutam 'A.T.-TANTRA, P.O - TENSA - 770042, DIST. SUNDARGARH (ODISHA)'. Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha	Odisha
Legal Notice sent by the respondent dated 18.11.2022 to S.B.Goutam intimating him that the Power of Attorney dated 10.05.2010 executed in his favour is cancelled	Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha Address of S.B.Goutam: G4, Fourth Floor, Kiran Plaza Building, No.84, District Centre, Chandrashekarapur, Bhubaneswar, Odisha	Odisha
Reply dated 24.11.2022 sent by Tantra Bauxite Mine represented by Mr.S.B.Goutam to the respondent	Address of the Tantra Bauxite Mine represented by Mr.S.B.Goutam: 'A.T.-TANTRA, P.O - TENSA - 770042, DIST. SUNDARGARH (ODISHA)'. Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-	Odisha



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Nature of Document	Address of the parties disclosed	Place of execution or Place of origin
Cuttack in W.P. (C) No.28227 of 2022 in a Writ Petition filed by the respondent against the State of Odisha and others Writ Petition was filed seeking direction to the State of Odisha to drop the Proceedings initiated under Rule 20(1) of Mineral Concession Rule, 2016 vide Annexure-10		
Order dated 05.12.2022 passed by the Orissa High Court in W.P.(C) No.32854 of 2022 in a writ petition filed by the respondent against the State of Odisha and others. Writ Petition was filed to show cause and to quash the Incorporation Certificate of Tantra Bauxite Mine	-	Odisha
Order dated 31.03.2023 passed by the High Court of Orissa at Cuttack in W.P. (C) No.9549 of 2023 in a Writ Petition filed by the respondent against the State of Odisha and another. The writ petition was filed seeking to quash the Notice dated 21.03.2023 issued by the State of Odisha to Mr.S.B.Goutam.	-	Odisha
Plaint filed by the respondent in the Suit C.S. No.2703 of 2022 on the file of Senior Civil Judge, Bhubaneswar filed against S.B.Goutam seeking to declare that the Power of Attorney dated 10.05.2010	-	Odisha



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Nature of Document	Address of the parties disclosed	Place of execution or Place of origin
granted by the respondent in favour of S.B.Goutam is cancelled		
Order dated 25.02.2023 passed by the Court of Civil Judge (Senior Division), Bhubaneswar in C.S. No.2703 of 2022 allowing the impleading application filed by M/s.Ananda Granites Exports Private Limited, the applicant herein and they were permitted to be impleaded as a party respondent in the Suit C.S. No.2703 of 2022 filed by the respondent against S.B.Goutam	-	Odisha
Appeal filed before the High Court of Orissa, Cuttack by the respondent against the Order dated 25.02.2023 permitting impleadment of M/s.Anada Granites Exports Private Limited (applicant herein)	-	Odisha
Tripartite Agreement dated 18.03.2010 between a) respondent b)M/s.Gayatri Mining Private Limited and M/s.Anand Granites Exports Private Limited (applicant herein)	Address of the respondent: B.N.Lal House, Chotisadak, Baidyanath Chowk, PO.-PS.Dist.-Sambalpur, Odisha Address of the applicant: Municipal High School Road, Santhapet, Ongole, Prakasam District, Andhra Pradesh 523 001 Address of M/s.Gayatri Mining Private Limited: HIG-1, Phase-1, BDA Colony, Pokhariput, PS. Air Field, Bhubaneswar - 751 020, Odisha	-
Deed of Agreement dated 18.03.2010 entered into	Address of the applicant:Municipal High School Road, Santhapet,	-



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Nature of Document	Address of the parties disclosed	Place of execution or Place of origin
between M/s.Gayatri Mining Private Limited and M/s.Anand Granites Exports Private Limited	Ongole, Prakasam District, Andhra Pradesh 523 001 Address of M/s.Gayatri Mining Private Limited: HIG-1, Phase-1, BDA Colony, Pokhariput, PS. Air Field, Bhubaneswar - 751 020, Odisha	
Payment receipts and Bank Transactions for the period from 01.09.2021 to 30.09.2021 and from 01.01.2022 to 31.01.2022 discloses that the applicant has transferred funds to various parties from its account with State Bank of India, Ongole Branch, Andhra Pradesh	-	Bhubaneswar, Orissa
Demand Drafts purchased by the applicant from the Indian Overseas Bank, Nungambakkam Branch, Chennai 600 034 favouring a)Compensatory Afforestation Fund (CAF) for Rs.2,75,00,000/-, b)State Pollution Control Board for Rs.1,25,000/- and c)Chief Executive Space Applications Centre for Rs.1,16,752/-	-	-
Account Statements in respect of the Bank Account maintained by the applicant with the Indian Overseas Bank, Bhubaneswar disclosing certain payments made which according to the applicant is made in respect of the subject mining lease	-	-



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12.It is clear from the above mentioned documents/orders filed by the applicant/petitioner themselves that no part of cause of action for filing these applications arose within the jurisdiction of this Court for the following reasons:

All the agreements between the respective parties were never entered into within the State of Tamil Nadu. None of the agreements disclose the Chennai address of the applicant. The Arbitration Invocation Notice dated 04.02.2023 was also sent by the applicant disclosing its Andhra Pradesh address only. All the replies sent by the respondent to the letters addressed by the applicant were sent only to the Andhra Pradesh address of the applicant. Admittedly, no payments were made by the applicant to the respondent. The Bank Statements reveals certain payments made to M/s.Gayatri Mining Private Limited and other Statutory Authorities by the applicant. Even those payments were made only from its Bank Account maintained with Indian Overseas Bank, Bhubaneswar, Orissa. From the remittances, it cannot also be ascertained that the said payments were made only towards the subject Mining Lease at Odisha. The applicant has also not produced any iota of evidence before this Court that the payments were made from Chennai towards the subject Mining Lease at Odisha. Even the three Demand drafts, which



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the applicant claims to have taken from its Chennai Bank Account does not reveal that the said demand drafts were taken only towards the subject Mining Lease at Odisha. The applicant is having its registered office at Andhra Pradesh, which address has been disclosed in all the agreements entered into with the respondent. Excepting for certain communications sent after the Arbitration Invocation Notice dated 04.02.2023, which discloses the Chennai Address of the applicant, all the previous exchange of correspondences between the applicant and the respondent disclose only the Andhra Pradesh Address of the applicant. The respondent has also addressed all its communications to the applicant only to the Andhra Pradesh address of the applicant. Only as an after thought, in order to falsely bring the dispute within the jurisdiction of this Court, the subsequent communications sent by the applicant after the issuance of the Arbitration Invocation Notice dated 04.02.2023 would disclose the Chennai address of the applicant. Even the exchange of Communication between S.B.Gowtam, representing M/s.Tantra Bauxite Mining Limited and the respondent discloses only the Odisha address of both the parties. The suit and the writ petitions have been filed by the respondent only at Odisha. Even though the applicant may claim that several meetings between the applicant and the respondent took



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place at Chennai, no iota of evidence has been placed on record to prove the same. The respondent has also categorically denied the same and therefore, it can be inferred that no meetings between the parties to the dispute took place at Chennai. The present applications filed before this Court having no jurisdiction is an abuse of process of law and Court as the applicant knowing fully well that no part of cause of action took place at Chennai or within the State of Tamil Nadu has filed these applications seeking for injunction and for appointment of an Arbitrator by this Court.

13.The judgment relied upon by the learned counsel for the applicant in ***BBR (India) (P) Ltd., v. S.P. Singla Constructions (P) Ltd., reported in 2023 1 SCC 693*** has no bearing to the facts of the instant case as no part of cause of action has arisen within the jurisdiction of this Court and further 'forum non conveniens' will also deter this Court from exercising its jurisdiction in these applications. In the aforesaid decision, the Hon'ble Supreme Court has held that whenever the seat of the Arbitration is not fixed, the Court having a part of cause of action can entertain an Application under Section 9 of the Arbitration and Conciliation Act and such a Court could have control over the



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Arbitration Proceedings and would be the exclusive Court for the purpose of Section 42 of the Arbitration and Conciliation Act, 1996. But in the case on hand, no part of cause of action has arisen within the jurisdiction of this Court and even if a miniscule part of cause of action is found to have taken place within the State of Tamil Nadu after trial, the interim relief being a discretionary relief, the Forum non conveniens doctrine will deter this Court from exercising jurisdiction.

14.The interim injunction relief sought for by the applicant is a discretionary relief. Being a discretionary relief, Forum Conveniens plays an important role for deciding as to whether injunction can be granted or not by this Court. Even if a miniscule part of cause of action is found to have taken place within the jurisdiction of this Court by the Arbitral Tribunal, once the same is constituted, Forum non conveniens will deter this Court from exercising jurisdiction in these applications.

15.Before deciding whether the Court is a "Forum non conveniens", the usual tests to be applied to determine "Forum Conveniens" are as follows:



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a)Ease of access to such evidence;

b)Interest of the two parties in their connections with the respective Forums;

c)The petitioner's chosen Court would be burdensome to the respondent;

d)If a Court finds this factor to be true, then that is often sufficient to dismiss the case and accept a Forum non conveniens claim;

e)Ease of obtaining witnesses;

f)Enforceability of judgment;

16.As seen from the aforementioned factors, the Courts will have to invoke the doctrine of "Forum non conveniens" if it satisfies the following conditions:

a)The Court is seriously an Inappropriate Forum;

b)There is substantially more appropriate Court that is available for the petitioner's claim;

17.In the instant case, as seen from the agreements/ documents/ orders filed by the petitioner themselves before this Court, it is clear that all the agreements/documents/orders, does not have its origin within the



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State of Tamil Nadu and has its origin either at Andhra Pradesh or in Orissa where major part of cause of action arose as the subject mines are located only in Orissa. The entire evidence pertaining to the subject Mining Lease and availability of the witnesses, who may have to be examined in case an Arbitration takes place are available only in the State of Odisha. Therefore, it is clear that this Court is an inappropriate forum for deciding these applications. Admittedly, there is a substantially more appropriate Court that is available for adjudicating the applicant/petitioner's reliefs that have been sought for in these applications.

18. During the pendency of these applications, if any undertaking was given to this Court by the respondent not to do certain acts, that will not imply that the respondent has acquiesced to the jurisdiction of this Court. The said undertaking if at all given would have been given by the respondent without prejudice to his rights questioning this Court's jurisdiction and therefore, it will not have any bearing on the final outcome of these applications and it shall not deter this Court to hold that these applications are not maintainable before this Court on account of lack of jurisdiction.



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20. Since these applications are dismissed for want of jurisdiction, there is no necessity for this Court to decide other issues, which arises for consideration including the issue of limitation. Since this Court is accepting the respondent's defence that this Court does not have jurisdiction to decide these applications, as no part of cause of action has arisen within the jurisdiction of this Court, there is no necessity for this Court to discuss the decisions relied upon by the learned counsel for the respondent.

21. In the result, these applications are dismissed with costs of Rs.1,00,000/- payable by the applicant to the respondent, which shall be



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paid within a period of one month from the date of receipt of a copy of
this order.

16.08.2023

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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ABDUL QUDDHOSE, J.

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Pre-delivery order in

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16.08.2023