

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.02.2025
DELIVERED ON: 05.02.2025

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK
M.A.T. 77 of 2023
With
I.A. No. CAN 1 of 2023
Eastern Coalfields Limited & Ors.
Vs.
M/s. BGM and M-NS (JV) & Ors.

Appearance:-

Mr. Debnath Ghosh
Mr. Syed Nurul Arefin
Mr. Syed Moyeenul Arefin

.....For the Appellants

Mr. Debottam Das
Mr. Tirupati Mukherjee

.....For the Respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the respondents in W.P.A. 24457 of 2022 is directed against the order dated 19th December, 2022, by which the writ petition filed by the respondents herein was disposed of by quashing the order dated 17th October, 2022 passed by the appellants banning the respondents for a period of three years from the date of issue of the order for participation in future tenders of Eastern Coalfields Limited (for brevity, "ECL").

2. The appeal was filed by the respondents in the writ petition viz. the ECL and others and the appeal was heard from time to time and the parties had filed Supplementary Affidavit, Affidavit-in-Opposition etc.
3. When the matter was earlier heard, the Court opined that the agreement between the parties contains an arbitration clause and it will augur well for the respondents to pursue such remedy as it will not only be an efficacious remedy but an effective remedy as well.
4. The matter was adjourned at the instance of the learned advocate appearing for the respondents/writ petitioners. During the pendency of this appeal, the respondents have invoked the arbitration clause and has approached this Court in AP No.14 of 2024 under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to resolve the dispute between the parties.
5. The learned Single Bench by order dated 29th April, 2024 had disposed of AP No.24 of 2024 appointing an Hon'ble Retired Judge of the Hon'ble Supreme Court of India as the Sole Arbitrator. The Hon'ble Arbitrator has entered upon reference and a notice of preliminary hearing was issued fixing the date as 15th June, 2024 at 11 a.m.
6. Subsequently, it appears that the Hon'ble Arbitral Tribunal is proceeding with the matter and the last procedural order was passed on 22nd January, 2025 wherein the submissions on either side were recorded, more particularly, the submissions on behalf of the respondents/claimants that they proposed to examine four witnesses and affidavit of evidence was directed to be filed within a time frame.

7. The appellants, who were the respondents before the Hon'ble Arbitral Tribunal had stated that they do not propose to examine any witness at that stage. However, the option of the respondents to adduce evidence was kept open.
8. The dates on which the Hon'ble Arbitral Tribunal will be sitting has also been mentioned in the order. It was also made clear that the time lines in the order are mandatory. In the event, the affidavits of evidence are not filed within the time granted by the Hon'ble Tribunal, evidence shall be treated as closed and the matter will be taken up on the basis of the documents already on record.
9. Thus, in our view, the respondents have rightly invoked the arbitration clause.
10. The learned advocate appearing for the respondents/ writ petitioners would contend that the banning order dated 17th October, 2022 is a non-speaking order, but it is in violation of the principles of natural justice and *ab initio void*.
11. A more or less identical issue came up before this Court in the case of ***Eastern Coalfields Limited & Anr. Vs. M/S. UCC-RLA (JV) & Ors.*** in ***MAT No.719 of 2024*** and by judgment dated 27th September, 2024, the appeal filed by the Eastern Coalfields Limited was allowed setting aside the order passed by the Hon'ble Single Bench and leaving it open to the writ petitioner to avail other remedies before the appropriate forum in the appropriate manner.
12. In the said decision, after taking note of various decisions of the Hon'ble Supreme Court, it was held as follows:-

“34. In *DLF Universal Limited*, the Hon’ble Supreme Court while considering how a contract should be interpreted held as follows”-

It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

As is stated in Anson's Law of Contract,

"a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large."

The Court assumes:

"that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly. A party who claims otherwise, violates the principle of good faith.

(See Purposive Interpretation in Law by Aharon Barak: 2005 Princeton University Press).

35. *The legal principle that could be culled out from the above decisions is that in matter relating to the interpretation of the term of a contract it should be agitated before the arbitrator or civil court as the case may be. If the contractor alleges that the Government has wrongfully withheld certain sums then the remedy is to approach the civil court and invoking Article 226 is not the proper remedy. External aids are not required to be applied while interpreting the terms and conditions of a contract. The subsisting contract cannot be rewritten in a writ proceeding. When serious disputed questions or rival claims arising out of breach of contract are required to be investigated and determined on the basis of evidence led in the civil court, the writ petition is not maintainable. While interpreting a contract it must be interpreted in such manner as to give efficacy to the contract rather than to invalidated it. The terms of the contract have to strictly read and natural meaning to given to it, no outside aid should be sought unless meaning is ambiguous.*

36.*****

37. *If the above legal principle is applied to the facts of the case, we have to necessary hold that a writ petition for enforcement of the terms and conditions of a contract was not maintainable. Equally interpretation of the terms and contract of a contract would also fall outside the jurisdiction of a petition under Article 226 of the Constitution.”*

13. We had directed the learned advocates for the parties to place before us the statement of claim filed before the Hon’ble Arbitral Tribunal and we had perused the prayers sought for in the said claim statement and we find that one of the prayers before the Hon’ble Arbitral Tribunal is to set aside the notices issued as void and a prayer has been made to cancel such notice. In any event, the issue as to whether the banning order was justified in the facts and circumstances of the case is to be thrashed out before the Hon’ble Arbitral Tribunal, which undoubtedly would require evidence to be gone into.
14. Therefore, we are of the view that the remedy provided under the contract to resort to arbitration cannot be stated to be non-effective or non-

efficacious rather it is effective and efficacious considering the facts and circumstances of the case.

15. That apart, by the conduct of the respondents, they themselves have invoked the arbitration clause and approached this Court for appointment of an Arbitrator, which was ordered and the Hon'ble Arbitral Tribunal has also entered upon reference and the matter is in progress.
16. Therefore, we are of the view that the respondents/writ petitioners should canvass all issues before the Hon'ble Arbitral Tribunal including the issue with regard to validity of the banning order.
17. Therefore, we are of the view that the order passed by the learned Single Bench setting aside the banning order and without relegating the respondents/writ petitioners to avail the remedy of arbitration requires to be set aside.
18. Accordingly, appeal and the connected application (I.A. No. CAN 1 of 2023) are allowed, the order passed by the learned Single Bench is set aside and the respondents/writ petitioners are entitled to pursue all claims before the learned Hon'ble Arbitral Tribunal including the plea that the banning order dated 17th October, 2022 is void and requires to be set aside.
19. Needless to state that if the banning period of three years is over, it will be well open to the respondents to participate in the tender that may be invited by the appellants. However, that participation will not confer any right on the respondents and such application shall be dealt with by the appellants/company in accordance with the extant rules and the terms and conditions of the notice inviting tender.
20. No costs.

21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I agree.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)

Pallab/KS AR(Ct.)