IN THE HIGH COURT AT CALCUTTA

ASR

Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 2809 of 2019
With
CAN 1 of 2019

Diversified Vyapaar Pvt. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.

For the Petitioners	:	**Mr. Shuvasish Sengupta, Adv.,** **Mr. Soumyajit Mishra, Adv.**
For the State	:	**Mr. Nilotpal Chatterjee, Adv.**
For the Respondent Nos. 4 to 6	:	**Mr. Sanjay Saha, Adv.**
Reserved on	:	**04.09.2025**
Judgment on	:	**04.09.2025**

Subhendu Samanta, J.

1. Petitioner No. 1 is a company is incorporated under the provisions of Companies Act 1956, engaged in the business of mining, manufacturing and has vast 2 experience in the field of exploration and exploitation of minerals in India. In the District of Purulia and

Bankura, there is significant quantity of deposit of ore containing Granite, which is viable for commercial exploitation.

2. Respondent No. 4 is a Government of West Bengal undertaking and is engaged in mining, trading and processing of various minerals including Coal, Stone, Rock- Phosphate, Quartz, Fireclay, Granite etc in the State of West Bengal. The respondent No. 4 set up a Granite processing unit namely 'Bamonshila' processing Unit, in Bankura District. The said Unit could not however, be properly run by respondent No. 4 due to infuse to induce requisite capital required to modernise the factory with the proper infrastructure with skilful and efficient man power and run the operation at an optimum scale. To fulfil the end for functioning, the respondent No. 4 published a **"Notice Inviting expression of Interest (EOI)"** of giving advertisement in leading the daily newspaper including their website for interested resourceful entrepreneurs 3 for selection of Joint Venture Partner (Project Development) for exploration and exploitation of mineral deposit along with setting up and running the processing plant in the State of West Bengal. The EOI contemplated the establishment of a Joint Venture partner (successful bidder) for proper exploitation and exploration of the mineral and proper running of processing plant.

3. EOI contemplated the grant of mines initially in favour of respondent No. 4 and thereafter, transfers to the newly established Joint Venture Company.

4. Petitioner No. 1 participated in the aforesaid bid process and became successful.

5. Petitioner No. 1 after completion of evaluation of bidding process, vide its letter dated 2nd December, 2013 offered the mines at Mouza – Berro West, Sinara, Raidih, Dulalpur, Bara Panjania and Baraseni in Purulia District and Mouzas- Digtore and Mochaharakend in Bankura District and processing of Granite at Bamnishala plant at Bankura District to the respondent no. 4 with highest facilitation fees of Rs. 2,612/- per cubic meter to be paid to the respondent No. 4 with a provision of cumulative increment @ of 5% per annum. The respondent No. 4 requested the petitioner to submit detailed concept Papers covering all aspects of Pre-project activities along with the nature of studies to be conducted and Project Evaluation Review Technique chart starting from the commencement of pre-project activities till submission of feasibility reports.

6. Petitioner No. 1 had been declared as Joint Venture Partner (Project Developer for exploration and exploitation) of mineral deposits along with setting up a running of processing plant, therefore on June 25, 2014, the petitioner No. 1 entered into a **Joint Venture Agreement (JVA)** with respondent No. 4 for organization, operation and management of Joint Venture Company (JVC).

7. The JVA provided that the equity share capital of the JVC would be issued, subscribed, and maintained in the ratio of the petitioner No. 1 as 74% and respondent No. 4 as 26%. The 26% equity of the respondent No. 4 in the JVC was to be allotted and issued as 5 shareholders equity shares as per terms of the Joint Venture Agreement.

8. Petitioner No. 1 furnished performance Bank Guarantee for Rs.-30,00,000/- (thirty lakhs) on 25th July, 2014 which was renewed till up to date.

9. In terms of the said Joint Venture Agreement, petitioner No. 1 applied for incorporation of JVC in the name of Bengal DVPL Granitess Minerals Ltd. with approval of respondent No. 4 on 2nd February, 2025, under provision of Companies Act 2013. After that parties have act upon the terms of the conditions of the JVA and respondent No. 4 was allotted with a share of 26% shareholders sweat equity. Thereafter the Board of Directors were formed, three from petitioner No. 1 and three from respondent No. 4 who participated in meeting held on 14th August, 2014 and appointed the Executive Director of the Respondent No. 4 as the Chairman of the Board of Director. Thereafter the petitioner from time to time, requested respondents to transfer the mining lease.

10. On 4th May, 2016 and 10th May, 2026 environment clearances were duly obtained from State Level Environment Impact 6 Assessment Authority, despite of the aforesaid efforts the respondents failed and neglected to transfer the mining lease and allowed the petitioner to

commence the mining activities through a short term quarry permit and by Mine Developer Operator and Purchaser (MDOP)

11. Suddenly on 30th January 2019 respondent No. 4 ultimately terminated the JVA dated 25th June 2014 on the plea that JVA stood discharge by frustration as contemplated in Clause 17 of the JVA. It is the only contention of the respondent No. 4 that in terms of the provisions of Section 17A (2B) of Amendment provisions of the Mines and Minerals (Development & Regulation) Amendment Act 2015, which was commenced on 27th March 2015, the shareholding of Joint Venture Company i.e. 74% and respondent No. 4 shareholding that is 26% is completely in violation and or contrary to Section 17A (2B) of the said Regulation. Therefore, the Joint Venture agreement became void and impossible to perform.

12. Learned Counsel for the petitioner submits that the stand taken by the Government regarding shareholding of 74% by Government Company in terms of Section 17A (2B) in MMDR Amendment Act 2015 is palpably illegal.

13. He further submits that Government cannot take a different stand due to change of law. He further submits that Joint Venture Agreement was entered between the parties in terms of EOI, at that relevant point of time it has been settled that equity share capital of Joint Venture Company would be issued subscribed and maintained for the ratio of petitioner No. 1 as 74% and respondent No. 4 as 26%, such stand cannot be altered due to change of law. Moreover, it is further argued that MMDR Amendment Act 2015 has no retrospective effect

thus the decision of the respondent authority by issuing the impugned letter of termination dated 30.01.2019 of Joint Venture Agreement need be set aside.

14. During argument, learned Counsel for the parties has admitted the fact that similar issue was raised before 8 Hon'ble Division Bench of this court in IRC Natural Resources Private Ltd. Vs. State of West Bengal and Ors. (2023) SCC Online 3516.

15. Learned Counsel for the parties have admittedly submits that the Hon'ble Division Bench has decided the law which shall govern in this case also.

16. Heard the Learned Counsel, perused the observation of Hon'ble Division Bench of this court in IRC Natural Resources Private Limited (Supra). The Hon'ble Division Bench had observed that----

> ***61. So, we are of the opinion that law enacted by the competent authority is always presumed to operate prospectively unless expressly intended to operate retrospectively or by necessary implication. The concept of prospective operation is to avoid the things done in the past to be rendered undone. It is also based on the common notion that law must always look forward and not backwards and the things which have been settled in the past within the framework of legislative provision should not ordinarily be taken away or***

rendered illegal or unsettled except undue compelling circumstances.

62. We are not unmindful of the proposition of law that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation. The principle of law is known as lexprospicit non respicit 9 meaning thereby the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. As was observed in Phillips v. Eyre [L.R.] 6 Q.B. 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the thenexisting law. The basis of the principle against retrospectivity is the principle of fairness, which must be the basis of every legal rule.

63. Perhaps no rule of construction is more firmly established than thus that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that

> ***effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.***
>
> ***64. In view of the above we have no hesitation in holding that in the absence of express statutory authorisation delegated legislation in the form of rules or regulations cannot operate retrospectively.***

State respondents have not preferred any appeal against the above observations of Hon'ble Division Bench. Thus, the ratio of IRC Natural Resources Pvt. Ltd. (Supra) has attains its finality.

In view of the above, I am also of opinion that MMDR Amendment Act, 2015 has no retrospective effect and it cannot made JVA dated 25.06.2014 invalid.

After considering the observation of Hon'ble Division Bench it appears to me that the impugned notice dated 30th January, 2019 issued by the respondent No. 4 is liable to be set aside.

17. Accordingly Writ Petition is disposed of.

18. The impugned notice dated 30th January 2019 regarding termination of Joint Venture Agreement issued by the respondent No. 4 is hereby quashed.

19. The State respondent authorities are hereby directed to transfer the existing mining lease in favour of respondent No. 7 in accordance

with the Joint Venture Agreement dated 25th June, 2014 within a period of 12 weeks from the date of passing of this order. In the meantime, temporary arrangement will be continued.

20. Writ petition along with connected applications if any, are disposed of. 11

21. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta,J)