ORDER OCD – 31

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/538/2025
M/S. ORISSA STEEL TRADING CORPORATION
VS
M/S. PURE COKE LIMITED AND ORS.

BEFORE:
THE HON'BLE JUSTICE SHAMPA SARKAR
Date : 23rd July 2025.

Appearance:

Mr. Soupayan S. Roy, Advocate
… for petitioner.

Mr. Swatarup Banerjee, Advocate
Ms. Bisakha Pal, Advocate
… for respondent.

1. The name of the respondent No.3 be deleted from the array of the respondents. In the opinion of the Court, the respondent No. 3 is neither a necessary nor a proper party in the arbitral proceeding. The conversion agreement was entered into between the petitioner and the respondent No.1. The respondent Nos.1 and 2 merged and the merged entity is the respondent No.2. According to the petitioner, the respondent No.2 will be bound by the agreement dated August 26, 2013, in view of the merger.

2. It is submitted that the said agreement was extended up to May 2022. The petitioner contends to have initiated the process but found that the plant required major maintenance, renovation and repairing work. The machineries installed by the respondent No.1 were in a dilapidated condition and non-operational. Owing to such hindrance, the petitioner

had to incur huge expenses in renovating the factory and repairing the machineries. Moreover, the land upon which the factory was to be constructed was also disputed. The revenue authority and local villagers seriously objected to the operation of the factory. Despite such obstacles, the petitioner had converted huge stock of coking coal into Lam Coke. The respondent No.1 failed and neglected to act in accordance with the agreement dated August 26, 2013, as a result of which, the petitioner claims to have suffered huge loss. Although the petitioner was running at a monetary deficit and the respondent No.1 had promised to invest in the business, the respondent No.1 did not take any step towards upgradation and/or upkeep of the industry and refused to make further investments. The petitioner had to take loans to invest into the business. The revenue generated from the industry was minimal. The petitioner was saddled with huge costs. The petitioner approached the respondent No.1 by writing a series of letters, but the respondent No.1 kept quiet.

3. It is urged by the petitioner that, in the meantime, by a scheme of amalgamation, the entire undertaking of the respondent No.1 along with its liabilities were transferred to the respondent No.2. The respondent No.2 thereafter terminated the conversion agreement dated May 11, 2018. It is further alleged that such termination was only to escape the liability of the respondent No.1 which has now fallen upon the respondent No.2. The respondent No.2 was asked to make payment of the claims by letters dated September 16, 2021 and March 30, 2022. The petitioner invoked the arbitration clause when the respondent No.3 had made claims towards

payment of the loans taken by the petitioner from the said respondent and a notice under Section 138 of the Negotiable Instruments Act was also issued to the petitioner. The arbitration clause was invoked by letter dated July 4, 2022 and the petitioner nominated a former Judge and a former member of ITA as its nominee arbitrator. The petitioner contends that according to the said extended agreement, all disputes and differences arising out of the agreement was made subject to the jurisdiction of Kolkata. Reference is further made to clause 7 of the original agreement which provides for settlement of disputes by arbitration, in case mutual discussions failed. Under clause 7, the venue has been mentioned as Cuttack, but under clause 17 of the extended agreement, courts at Kolkata have exclusive jurisdiction.

4. Mr. Banerjee, learned advocate for the respondent Nos.1 and 2, submits that the allegations of the petitioner are not correct. In the alternative, the respondent No.2 now has claims against the petitioner, for violating the terms and conditions of the original agreement and the extended agreement.

5. The issues raised by Mr. Banerjee, including the point of limitation are to be adjudicated by the learned arbitrator. All points are left open for adjudication by the learned arbitrator. This Court is, prima facie, satisfied about the existence of an arbitration clause. None of the factual issues have been decided. All objections are to be raised before the learned arbitrator.

6. Under such circumstances, this Court appoints Justice Samapti Chatterjee, former Judge of this Court,as the learned arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned arbitrator shall fix her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

7. Accordingly, the application is disposed of.

(SHAMPA SARKAR, J.)

S. Kumar / R. D Barua