CGHC010335262026 2026:CGHC:38307

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 56 of 2026

S Kumar's Associates G.S. Compound, New Bus Stand, T.P. Nagar, Korba, C.G. H No. 154, Agrasen Marg, Korba, C.G. 495 767, Through Its Authorised Signatory, Sanjay Agrawal, S/o Sh. Gaurishankar Agrawal, Aged About 52 Years

... Applicant

versus

1. South Eastern Coalfields Limited SECL Through Its Chairman Cum Managing Director, SECL Headquarters, Seepat Road, Bilaspur 495 001, Chhattisgarh
2. The General Manager (CMC) South Eastern Coalfields Limited, SECL Headquarters, Seepat Road, Bilaspur 495 001, Chhattisgarh
3. The General Manager (Operations)/ Area General Manager South Eastern Coalfields Limited, Raigarh Area, Chhote Atarmuda, Raigarh 496 001, Chhattisgarh.

... Respondents

For Applicant	**:** Mr. Kartik Kathuriya and Mr. Rishabh Garg, Advocate (through video-conferencing).
For Respondents	**:** Dr. Sudeep Agrawal, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Order on Board

31.08.2026

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. The facts, in brief, as projected by the applicant are that the applicant, S. Kumar's Associates, is a sole proprietorship concern of Ms. Priya

Agrawal, engaged in the business of civil and mining contract works, including overburden removal and allied works for public sector undertakings. The present arbitration request is being filed through Mr. Sanjay Agrawal, the Authorised Signatory and constituted attorney of the applicant. Respondent No. 1 is a Coal India Limited, a public sector undertaking Shaving its headquarters at Bilaspur, engaged in the operation of coal mines in the States of Chhattisgarh and Madhya Pradesh. Respondents Nos. 2 and 3 are the officers of respondent No. 1 concerned with the subject contract and with the disputes forming the subject matter of the present arbitration request. The respondents floated NIT No. SECL/BSP/CMC/e-Tender/249 dated 22.06.2018 for "Hiring of HEMM for excavating overburden (including drilling in all kinds/over work), loading of tippers, transportation and unloading of the excavated materials and silt, dumping, dozing, scrapping/removal of bands, preparation/maintenance of haul road/transportation road and similar work, water sprinkling and spreading of excavated material at the site shown and levelling of dumps as per the directives of the management/engineer-in-charge at Gare Palma IV/2&3 OCP, Raigarh Area" for a total quantity of 30,02,996 CuM for a period of 300 days @ 10,010 CuM per day. Prospective bidders were required to furnish an Earnest Money Deposit of Rs. 20,22,100/-. The estimate was prepared at a base diesel price of Rs. 71.85 per litre as on 09.05.2018. The applicant participated in the tender process, furnished the requisite Earnest Money Deposit and emerged as the successful bidder. Accordingly, the respondents issued Letter of Intent dated 06.10.2018 in favour of the applicant. The total contract value was Rs. 20,45,35,847.52/- inclusive of GST @ 18%, and the duration of the contract was 300 days. The applicant was further required to furnish security in two parts, namely Performance Security at the time of award and Retention Money to be

recovered from the running bills and accordingly furnished Bank Guarantee No. 498601GL000318 dated 09.11.2018 for Rs. 82,04,693/- in lieu of 5% Security Deposit. Pursuant to and in terms of the Letter of Intent, the applicant and the non-applicants executed a written Agreement dated 23.12.2018 ("the Agreement"). The clauses of the Agreement relevant for the purposes of the present Arbitration Request are Clauses 4.4, 6.2, 6.4, 11, 13 and 13A. Clause 13 of the Agreement provides for a two-stage in-house mechanism for the settlement of disputes, and Clause 13A thereof provides that disputes which remain unresolved through the said mechanism shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The said Clause 13A constitutes a valid, subsisting and binding arbitration agreement in writing between the parties within the meaning of Section 7 of the Act of 1996, and its existence is not, and cannot be, disputed by the respondents.

"CLAUSE 13: SETTLEMENT OF DISPUTES

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.
The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 days of arising of the cause of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.
Effort shall be made to resolve the dispute in two stages.

In first stage dispute shall dispute shall be referred to Area CGM, GM.

If the differences still persist, the settlement of dispute shall be resolve in the following manner:

Dispute relating to the commercial contracts with Central Public Sector Enterprises / Govt. Departments (except Railways, Income Tax, Customs & excise duties)/ State public Sector Enterprises shall be referred by Party for Arbitration to the PMA (Permanent Machinery of Arbitration) in the Department of Public Enterprises.

In case of parties other than Govt. Agencies, the redressal of the dispute may be sought through Arbitration (THE ARBITRATION AND CONCILIATORY ACT, 1996) as amended by AMENNDMENT

ACT of 2015).

CLAUSE 13A: SETTLEMENT OF DISPUTES THROUGH ARBITRATION

If the parties fail to resolve the disputes/differences by in house mechanism, then depending on the position of the case, either the employer/owner or the contractor shall give notice to other party to refer the matter to Arbitration instead of directly approaching court. The contractor shall, however, be entitled to invoke Arbitration clause only after exhausting the remedy Available under Clause 13.In case of parties other than Govt. agencies, the redressal of disputes/differences shall be sought through Sole Arbitrator as under Clause 13.
In case of parties other than Govt. agencies, the redressal of disputes/differences shall be sought through sole Arbitrator as under:

Sole Arbitration:

In the event of any question, dispute or difference arising under these terms & condition or any condition contained in this contract or interpretation of terms of, or in connection with this Contract (except as to any matter the decision of which is specially provided by these conditions), the same shall be referred to the Sole Arbitration of a person, appointed to be the Arbitrator by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be). The award of the Arbitrator shall be final and binding on the parties of this Contract.
(a) In the event of the Arbitrator dying, neglecting or refusing to act or resign or being unable to act for any reason, or his/her award being set aside by the court for any reason, it shall be lawful for the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) to appoint another Arbitrator in place of the outgoing arbitrator in the manner aforesaid.
(b) It is further a term of this Contract that no person other than the person appointed by the Competent Authority of CIL/CMD of Subsidiary Company (as the case may be) as aforesaid should act as Arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all.

The venue of Arbitration shall be the place from which the Contract is issued.
Applicable Law: The contracts shall be interpreted in accordance with the laws of the Union of India."

3. As per the Memorandum of Work, the date of commencement of the work was 18.11.2018, the contractual duration being 300 days. The applicant commenced the work and executed the same diligently. During the course of execution, the applicant encountered various hindrances and delays for reasons entirely beyond its control, which were duly recorded in the Hindrance Register maintained in terms of Clause 6.4 of the Agreement. The

applicant accordingly sought an extension of 168 days vide its letter dated 21.08.2019. The respondents, vide letter dated 08.09.2019, granted a provisional extension of 113 days, but sought to impose conditions to the effect that the extension would be at "existing rate or new tender rate whichever is lower" and further reserved a right to impose penalty. The applicant objected to the said conditions vide its letter dated 12.09.2019 as being contrary to Clause 6.4 of the Agreement, hereupon the respondents, vide letter dated 16.09.2019, granted the extension on the existing rates and terms and withdrew the objectionable conditions. Thereafter, on the proposal of the project authority, a second extension of 75 days, i.e. from 06.01.2020 to 20.03.2020, was granted to the applicant vide letter dated 05.01.2020. Notwithstanding the hindrances and delays, the applicant successfully completed the entire work within the extended period, i.e. on 20.03.2020, and duly discharged all its obligations under the Agreement. In acknowledgement thereof, the respondents issued the Certificate of Completion vide letter dated 24.04.2020.

> "Clause 11: COMPLETION CERTIFICATE/DEFECT
>
> LIABILITY CERTIFICATE
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> > On completion of the work and notifying the same by the contractor to the Engineer-in-Charge, Completion Certificate shall be issued by the Engineer-in-charge only in the event the work is completed satisfactorily in every respect. Payment of final bill shall be made on completion of the contract and refund of security deposit shall, however, be made as per relevant clause of the contract."

4. In terms of Clause 11 of the Agreement, a Certificate of Completion is issued only where the work is found to have been completed "satisfactorily in every respect". The issuance of the Certificate of Completion dated 24.04.2020 is therefore conclusive acknowledgement by the respondents of the satisfactory completion of the work, and the Applicant thereupon became entitled to the settlement of the final bill and to the refund of the Security

Deposit. Further, in terms of Clause 4.4 of the Agreement, the Performance Security was refundable within 60 days and the Retention Money within 180 days of completion of the work. Despite the aforesaid, the respondents failed and neglected to settle the final bill or to refund the Security Deposit and the Earnest Money Deposit. The applicant addressed letters dated 20.08.2020 and 06.05.2022 in this regard, to which no response whatsoever was received. Instead of settling the applicant's admitted dues, the respondents, nearly five years after the completion of the work, issued a cryptic one-page letter dated 12.03.2025, whereby a penalty and recoveries aggregating Rs.58,71,418.81/- were unilaterally imposed upon the applicant, purportedly on the strength of a "Committee Report". By the said letter, the respondents intimated that a sum of Rs. 25,80,436.30/-had already been adjusted from the amount lying with them under the same contract and called upon the Applicant to deposit the balance sum of Rs. 32,90,982.51/-. The said penalty was imposed without any prior show cause notice, without any opportunity of hearing, and without disclosing any basis or calculation whatsoever. The applicant, vide its letters dated 03.04.2025 and 30.05.2025, called upon the respondents to furnish a copy of the Committee Report relied upon but the same has not been furnished till date. Further, the recovery of Rs. 23,60,909.80/- claimed on account of diesel de-escalation proceeds upon a demonstrably erroneous base price. The price of diesel prevailing on the date of issuance of the Letter of Intent, i.e. 06.10.2018, was Rs. 73.32 per litre, whereas the Respondents have adopted a figure higher by Rs. 4.61 per litre, apparently by taking the prevailing price of petrol to be that of diesel, thereby inflating the recovery. This was specifically brought to the notice of the respondents vide letter dated 03.06.2025 but remains unrectified. While computing the diesel de-escalation, the respondents have adopted the executed quantity as 26,80,651.994 CuM, whereas payment

has been released only for 25,49,030.825 Cu. M. The respondents have thus adopted a higher executed quantity for the purpose of recovery while restricting the quantity for the purpose of payment. Consequently, payment for 1,31,621.169 CuM, amounting to Rs. 75,80,063/- plus GST @ 18%, remains outstanding and payable to the applicant. The aforesaid objections, together with the applicant's objection to the alleged excess payment of Rs. 10,57,417.70/-, were raised in detail vide the Applicant's letter dated 10.06.2025.

5. The penalty imposed under Clause 6.2 of the General Terms and Conditions of the Agreement extends to the month of March 2020, which fell within the nationwide COVID-19 lockdown, constituting a force majeure event during which no penalty could lawfully be imposed under the terms of the Agreement. Additionally, a sum of Rs. 24,40,723/- had already been deducted from the Applicant on an earlier occasion under the same clause, so that the total recovery effected from the Applicant aggregates Rs. 83,12,141.81/-, without any contractual foundation whatsoever.19. Disputes having thus arisen between the parties, the applicant invoked the first stage of the dispute settlement mechanism under Clause 13 of the Agreement vide its notice dated 16.07.2025, referring the disputes to the Area CGM/GM for settlement. Apprehending coercive and unilateral recovery of the disputed amount from its other running contracts and from its security deposit, ONER the applicant filed an application under Section 9 of the Act of 1996 before the Hon'ble Commercial Court (District Judge Level), Nava Raipur Atal Nagar, registered as Arb. MJC No. 33 of 2025. The Hon'ble Commercial Court, vide its order dated 03.09.2025, disposed of the said application under Section 9, inter alia directing that it would be proper for the Respondent's not to take any unilateral action in respect of recovery of the purported outstanding amount from any other contract of the Applicant

without prior intimation and opportunity, and further recording that the parties may pursue the two-stage in-house dispute resolution mechanism under Clause 13, and that if the dispute remained unresolved, the Applicant may invoke arbitration under Clause 13A of the contract. The disputes remaining wholly unresolved, the applicant invoked the second stage of Clause 13 vide its notice dated 29.10.2025, referring the disputes to the Committee constituted by the respondents. No action or response was received in relation thereto either. The applicant has thus scrupulously exhausted the entire pre-arbitral, in-house dispute resolution mechanism contemplated by Clause 13 of the Agreement, and the said mechanism has failed to yield any resolution. The disputes between the parties accordingly continue to subsist. In these circumstances, the applicant issued a notice bearing dated 02.03.2026 under Section 21 of the Arbitration and Conciliation Act, 1996 read with Clause 13A of the Agreement, invoking arbitration and calling upon the Respondents to concur in the appointment of an Arbitrator. The said notice was duly served upon the respondents. By the said notice, the applicant has raised the following claims against the respondents, which constitute the disputes requiring adjudication by the Arbitral Tribunal:(i) Pending payment of Rs. 75,80,063/- plus GST @ 18% towards the executed quantity of 1,31,621.169 CuM, against which diesel de-escalation cost has been imposed by the respondents; (ii) Waiver of the entire penalty levied under Clause 6.2 of the Agreement and refund of Rs. 24,40,723/- deducted on an earlier occasion under the said clause; (iii) Repayment of Rs. 25,80,436.30/- adjusted from the amount lying with the Area; (iv) Release of the Earnest Money Deposit of Rs. 20,22,100/- on account of successful completion of the work on 20.03.2020; (v) Recalculation of the diesel de-escalation cost on the correct base rate of diesel: and Payment of interest at 18% per annum on the aforesaid amounts from the dates on which

they became due and payable.

6. By the said notice dated 02.03.2026, the applicant further nominated Hon'ble Justice (Retd.) Dhirendra Mishra, former Judge of the High Court of Chhattisgarh, to act as the Sole Arbitrator, and called upon the respondents to convey their agreement to the said nomination within thirty days of receipt of the notice, failing which the Applicant would be constrained to approach this Hon'ble Court under Section 11 of the Act of 1996. Althoug a period of well over thirty days has elapsed since the receipt of the said notice, the Respondents have neither responded to the notice, nor conveyed their consent to the nomination made by the Applicant, nor proposed any alternative name. The parties have therefore failed to agree upon the appointment of an Arbitrator, and the occasion for the exercise of the power under Section 11(6) of the Act of 1996 by this Hon'ble Court has squarely arisen. Subsequent to the invocation of arbitration, the Area General Manager, SECL, Raigarh Area, purported to pass an order dated 11.03.2026, styled a "Speaking Order", whereby the applicant's representations dated 16.07.2025 and 29.10.2025 were rejected in their entirety, it being held that no amount is payable to the applicant, that the recovery of Rs. 5871,418.81/- stands confirmed, that the adjustment of Rs. 25,80,436.30/- and the appropriation of the EMD of Rs. 20,22,100/-are valid, and that the applicant is liable to deposit the balance recovery. The aforesaid order dated 11.03.2026 is an order passed by an officer of the respondents, who is a party tothe dispute, in its own cause, and does not and cannot constitute an adjudication binding upon the applicant so as to foreclose the reference of the disputes to arbitration. If anything, the said order places the existence of live and subsisting disputes between the parties beyond any manner of doubt and demonstrates that the in-house mechanism under Clause 13 stands exhausted without resolution. The merits

of the said order, and of the claims and counter-claims of the parties, are matters falling squarely within the domain of the Arbitral Tribunal and are not the subject matter of the present Arbitration Request. In the aforesaid facts and circumstances, the respondents having failed and neglected to act in terms of the arbitration agreement and to concur in the appointment of an Arbitrator despite due service of the notice under Section 21 of the Act of 1996, the applicant is left with no option but to invoke the jurisdiction of this Hon'ble Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of a Sole Arbitrator to adjudicate upon the disputes between the parties.

7. Learned counsel for the respondents opposes the present arbitration request application, however he submits that the respondents shall have no objection if this Court appoints any Arbitrator for resolving the dispute between the parties.

8. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

9. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this District Court is appointed as the Sole Arbitrator. They further submit that Mr. Ashok Ku. Panda, who is a retired District Judge may be appointed as sole Arbitrator.

10. In view of the above consensus between the learned counsel for the parties, **Mr. Ashok Ku. Panda** retired District Judge is appointed to act as the sole Arbitrator to resolve the dispute involved in this arbitration request between the parties.

11. The Registry is directed to communicate this order to Mr. Ashok Ku. Panda in the proper address.

12. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

13. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
Chief Justice

Preeti