



2026:CGHC:22566

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 47 of 2024**

S K Samanta And Co (P) Ltd., A Company Incorporated Under The Companies Act, 1956 Through Its Director Mr. Aruanshu Brahma, Having Its Registered Office And Carrying On Business, Inter Alia At Suite No. 4a, 2/5, Sarat Bose Road, Kolkata - 700020.

---Applicant(s)**Versus**

1 - South Eastern Coalfields Limited, Through Secretary, Labour Department 27, Sector 27, Nawagaon Parsatti, Atal Nagar- Nava Raipur, Chhattisgarh - 492101 As Per Honble Court Order Dated 24-06-2025

2 - The State Of Chhattisgarh Through Secretary, Labour Department 27, Sector 27, Nawagaon Parsatti, Atal Nagar- Nava Raipur, Chhattisgarh - 492101 As Per Hon'ble Court Order Dated 24-06-2025

3 - Chhattisgarh Building And Other Construction Workers Welfare Board Constituted Under Section 18(1) Of The Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act. 1996 Having Its Office At Sector 24 Office Complex Block A- 1st Floor Atal Nagar Nava Raipur As Per Hon'ble Court Order Dated 24-06-2025

--- Respondent(s)

ARBR No. 48 of 2024

S. K. Samanta And Co. (P) Ltd. A Company Incorporated Under The Companies Act, 1956 Through Its Director Mr. Arunanshu Brahma, Having Its Registered Office And Carrying On Business, Inter Alia, At Suite No. 4a, 2/5, Sarat Bose Road, Kolkata- 700020

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--- **Respondent(s)**

ARBR No. 4 of 2025

S.K. Samanta And Co. (P) Ltd. A Company Incorporated Under The Companies Act, 1956 Through Its Director Mr. Arunanshu Brahma, Having Its Registered Office And Carrying On Business, Inter Alia, At Suite No. 4A, 2/5, Sarat Bose Road, Kolkata 700020

--- **Applicant(s)**

versus

1 - South Eastern Coalfields Limited Through Secretary, Labour Department
27, Sector 27, Nawagaon Parsatti, Atal Nagar Nava Raipur, Chhattisgarh
492101

2 - The State Of Chhattisgarh Through Secretary, Labour Department 27,
Sector 27, Nawagaon Parsatti, Atal Nagar Nava Raipur, Chhattisgarh 492101

3 - Chhattisgarh Building And Other Construction Workers Welfare Board
Constituted Under Section 18(1) Of The Building And Other Construction
Workers (Regulation Of Employment And Conditions Of Service) Act, 1996
Having Its Office At Sector 24, Office Complex, Block-A 1st Floor, Atal Nagar,
Nawa Raipur

--- **Respondent(s)**

ARBR No. 6 of 2025

S K Samanta And Co (P) Ltd. A Company Incorporated Under The
Companies, Act, 1956 Through Its Director Mr. Arunanshu Brahma, Having Its
Registered Office And Carrying On Business, Inter Alia, At Suite No. 4 A, 2/5,
Sarat Bose Road, Kolkata 700020.

---**Applicant(s)**

Versus

1 - South Eastern Coalfields Limited Constituted Under Section 18(1) Of The
Building And Other Construction Workers (Regulation Of Employment And
Conditions Of Service) Act. 1996 Having Its Office At Sector 24 Office
Complex Block A- 1st Floor Atal Nagar Nawa Raipur (As Per Hon'ble Court
Order Dated 24-06-2025)

2 - The State Of Chhattisgarh Through Secretary, Labour Department 27,
Sector 27, Nawagaon Parsatti, Atal Nagar- Nava Raipur, Chhattisgarh -
492101 (As Per Hon'ble Court Order Dated 24-06-2025)

3 - Chhattisgarh Building And Other Construction Workers Welfare Board
Constituted Under Section 18(1) Of The Building And Other Construction

Workers (Regulation Of Employment And Conditions Of Service) Act. 1996
 Having Its Office At Sector 24 Office Complex Block A- 1st Floor Atal Nagar
 Nawa Raipur (As Per Hon'ble Court Order Dated 24-06-2025)

--- Respondent(s)

(Cause Title Taken from Case Information System)

For Applicant(s)	: Mr. Abhijeet Chaterjee, Senior Advocate assisted by Mr. Aman Pandey and Mr. Vinamra Shrivastava
For Respondent/SECL	: Mr. Vaibhav Shukla, Advocate.
For Respondent/State	: Mr. S.S.Baghel, Government Advocate.
Date of Hearing	: 05/05/2026
Date of Order	: 13/05/2026

Hon'ble Mr. Ramesh Sinha, Chief Justice

C A V Order

1. Since the facts and issues involved in these four arbitration request petitions are similar, they are being considered and decided by this common order and ARBR No. 48/2024 is taken as the lead case.
2. The applicant-S.K.Samanta & Co. (Pvt.) Ltd. has filed these arbitration request petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator for adjudicating the dispute that has arisen between the parties.
3. The facts, in brief, as projected by the applicant {in ARBR No. 48/2024} is that the applicant Company is an ISO 9001-2008 Company started civil construction contracts as a proprietary / partnership firm has been in the business of executing EPC Contracts ever since its incorporation in 1982 in a wide arena of projects pertaining to Central and State Governments, Public Sector Companies, Railways, Power Plants, Steel Plant, Mines, Roads, Bridges etc. Pursuant to a Notice Inviting Tender (*for short, the NIT*) being NIT No. GM(C)/SECL/BSP/Et-Tk/GVR/2020/185 dated 15.06.2020 issued on behalf of the respondent No. 1-South Eastern Coalfields Ltd. (*for short, the SECL*) inviting tenders

for carrying out work of design, and commissioning of workshop and store of Gevra OCP, including maintenance during defect liability period (DLP), on turnkey basis, the applicant submitted its bid/offer for the said work. The said NIT comprised of, *inter alia*, 'Instructions to Bidders' (*for short, the ITB*) and 'General Terms and Conditions of Contract' (*for short, the GCC*). The offer of the applicant was accepted and a Letter of Award Ref. No. GM(C)/SECL/BSP/WO/GVR/2020/95 dated 08.11.2020 was issued in favour of the applicant for the said work. Clause 31 and 32 of the ITB provided that an amount of 1% of the work value payable to the contractors will be deducted from all bills towards worker's welfare under Building and Other Construction Worker's Welfare Cess Rules, 1998 and Building and other Construction Workers Welfare Cess Act, 1996. In terms of the provisions of clause 20.5 of ITB, a formal agreement dated 06.03.2021 was executed between the parties for carrying out the said work covered by the Purchase Order. The ITB and the GCC were part of the agreement dated 06.03.2021. While making payment of running invoices/ bills of the applicant, the respondent-SECL started deducting cess in terms of clause 31 of the ITB as set out above.

4. Mr. Abhijeet Chatterjee, learned Senior Advocate appearing for the applicant would submit that in 1996, the Parliament enacted the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (*for short, the BOCW Act*). Section 1(4) of the BOCW Act, insofar as it is material for the present purpose, provides that it shall be applied to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work. The expression "establishment" is defined in Section 2(1)(j) of the "BOCW Act" which states that "*establishment*" means any establishment

belonging to, or under the control of, Government, anybody corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs. Further, the expression "*building or other construction work*" is defined in Section 2(1) (d) of the BOCW Act to mean the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works(including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply.

5. Mr. Chatterjee would submit that a combined and plain reading of the aforesaid provisions of BOCW Act shows that the said Act is not applicable to any building or other construction work to which the provisions of the Mines Act, 1952 applies. The construction and maintenance of a workshop in the precincts of a coal mine which is the work covered under the aforesaid contract between the applicant and

the respondent-SECL is an activity to which the Mines Act, 1952 would apply. Hence, the BOCW Act will not apply to the activities carried out by the applicant in respect of setting up and maintenance of workshop as contemplated under the agreement in question, by reason of operation of the exclusionary provision in Section 2 (1) (d) of the BOCW Act.

6. In 1996 itself, Parliament enacted the Building and other Construction Workers' Welfare Cess Act, 1996 (*for short, the BOCW Cess Act*) to provide for levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Boards (*for short, the Board*) constituted under the BOCW Act. Section 3(1) of the BOCW Cess Act provides that *"(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), at such rate not exceeding two per cent. But not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify"*. In exercise of powers under Section 14(1) of the BOCW Act, the Central Government has framed the Building & Other Construction Workers' Welfare Cess Rules, 1998 (*for short, BOCW Rules*). Rule 4(3) of the Cess Rules provides as follows: -

"(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works".

7. It is only in a situation in which the provisions of BOCW Act applies to an activity in a particular establishment, that the provisions of Rule 4(3) confer jurisdiction or power on an organization which is getting such

activities executed by another concern/ contractor to deduct cess payable from the bills of the other concern/ contractor executing the work. As the BOCW Act is not applicable for setting up and maintenance of a workshop in the precincts of a coal mine, no cess is leviable in terms of Section 3(1) of the BOCW Cess Act and hence no deduction is permissible in terms of Rule 4(3) of the Cess Rules. The said Rule authorises deduction of the cess payable which obviously means cess leviable under Section 3 of the BOCW Cess Act. Further, as no cess is payable in respect of the operations of the applicant under Section 3, it is illegal to deduct the same from the bills of the applicant. The aforesaid clause 31 of the ITB forming part of the contract contemplates deduction of cess under the BOCW Cess Act and BOCW Cess Rules, the respondent-SECL has no power, authority or jurisdiction to deduct cess in terms of the said clause 31 and all such deductions are illegal and unauthorised and liable to be refunded by the respondent. After the applicant was advised that the BOCW Act and consequently the BOCW Cess Act and the BOCW Cess Rules were not applicable for any work or activity in the course of construction of Coal Handling Plant (CHP) and no cess could be deducted under the BOCW Cess Act or BOCW Cess Rules from payments in respect of the invoices/ bills of the applicant in respect of the work covered under the Agreement in question (as stated above), the applicant raised the contention that no cess was deductible from payments against its bills under BOCW Cess Act or BOCW Cess Rules. The issue was raised by the applicant with the respondent-SECL through several letters being SKSL Letter No./174/0011/PROJ-22/ SECL/CBG/1508 dated 20.10. 2023, SKSL Letter No. 168/172, 173,174/0011/PROJ-202, 214, 218 and 222/SECL/ CBG/1536 dated 30.10.2023., SKSL Letter No. 168, 172,173,174/ 0011/Proj-202, 214,

218 and 222/SECL/CBG/1610 dated 08.11.2023., SKSL Letter No. 168,172,174/0011/PROJ-202,214,218 and 222/SECL/ CBG/1706 dated 24.11.2023., SKSL Letter No. 174/0011/PROJ-202/SECL/CBG/1721 dated 25.11.2023., SKSL Letter No. 168, 172, 173, 174/0011/proj-202,214,218,222/SECL/CBG/2032 dated 11.01.2024., SKSL Letter No. 168, 172, 173, 174/0011/PROJ-202, 214,218,222/SECL/CBG/0362 dated 09.05.2024., SKSL Letter No. 168, 172, 173, 174/0011/Proj-202,214,218,222/SECL/CBG/0739 dated 20.06.2024. and Ref. No. 168, 172, 173, 174/0011/PROJ-202, 214,218,222/SECL/CBG/1073 dated 27.07.2024 written to the respondent demanding refund of BOCW Cess illegally deducted from payments made to the applicant against its bills. In the meantime, the respondent-SECL had written a letter dated 22.05.2024 alleging that the amount of BOCW Cess which has been recovered from various contracts have been deposited with the State authority and therefore the respondent-SECL would not be in a position to refund the amount from its own fund. However, the respondent-SECL did not take any step for refunding the cess illegally deducted even after completion of all payments under the contract, and thus, by conduct and/ or in effect and/ or by implication, the respondent rejected and /or repudiated the claim asserted by the applicant giving rise to disputes and differences between the applicant and the respondent regarding non-deductibility of BOCW cess in law and non-refund of cess illegally deducted. The applicant, by its letter dated 31.07.2024 made a request to the General Manager, of the respondent-SECL for appointment of a Dispute Redressal Committee in terms of Clause 42.0 of the GCC forming a part of the agreement. The applicant further stated that in case the dispute regarding refund of the deducted BOCW Cess cannot be resolved by the Committee, the

applicant would wish to proceed for Settlement of Dispute through Arbitration in terms of Clause No. 42A of the GCC forming part of the agreement. However, the respondent-SECL did not settle the dispute/difference as aforesaid nor did it constitute any Committee. The respondent also failed to appoint an Arbitrator and the differences persisted. In the circumstances, the applicant wrote a letter 23.08.2024. reiterating its request for appointment of an Arbitrator. In the instant case, the agreed procedure for appointment of arbitrator is contained in Clause 42A of the GCC forming a part of the agreement as stated above, the respondent-SECL has failed to act as required under the said agreed procedure. The agreement on the appointment procedure does not provide any other means for securing the appointment. As such, this Hon'ble Court may be pleased to appoint a Sole Arbitrator for adjudicating the disputes and differences that have arisen between the parties. Whether or not the BOCW Act, BOCW Cess Act and the Rules are applicable in case of the applicant, can also be adjudicated by the Arbitrator so appointed by this Hon'ble Court.

8. On the other hand, Mr. Vaibhav Shukla, learned counsel appearing for the respondent/SECL would submit that the respondents have deducted BOCW Cess @ 1% from the running bills of the applicant in terms of clause 31 and 32 of ITB pursuant to the direction and notification of State Government dated 19.02.2021 and 27.11.2021. The BOCW cess deduction are statutory deductions which is mandatorily deducted in terms of section 3 of BOCW Cess Act pursuant to the demand made by the State authorities and instructions received by respondent No. 3, which is evident from the letter dated 21.09.2022. The cess deducted/collected is required to be deposited before the cess authorities. Accordingly, as per statutory provisions and contractual provisions, the

respondent-SECL after collecting cess from the applicant has deposited the cess amount before the State cess authorities. SECL is only the collecting agent of the cess and not the beneficiary of the cess amount. Any refund of the cess amount is to be done by State Authorities and not the SECL. On this count also, these arbitration request petition deserve to be dismissed.

9. Mr. Shukla would further submit that since the deduction of cess is statutory in nature therefore any dispute regarding the same is not arbitrable. It is well settled principle of law that dispute falling within the jurisdiction of statutory authorities are not arbitrable disputes. In the present case, as per provision of BOCW Cess Act, it is the State Cess authorities within whose jurisdiction the present dispute falls. A detailed mechanism is provided under the provision of BOCW Cess Act, 1996 and BOCW Act and Rules to raise the grievance including applicability of the Act and failing which the applicant could have invoked extraordinary jurisdiction of the Hon'ble Court under Article 226 of the Constitution of the India against the State Cess authority but instead of exhausting statutory and constitutional remedies, the applicant has chosen to file the instant application under section 11(6) of the Arbitration and Conciliation Ac. Moreover the SECL has raised the grievances before the State cess authorities vide letter dated 29.12.2023 (Annexure R/3) but the respondent No. 3 has rejected the same on 27.05.2024 (Annexure R/4) stating that the provisions of BOCW Cess Act is applicable on the work executed by the applicant at different sites of SECL. Against the rejection of the representation, the applicant could have exhausted other remedies instead of filing the instant application for appointment of arbitrator. As such, the present petitions deserve to be dismissed.

10. Mr. S.S.Baghel, learned Government Advocate appearing for the respondent/State would submit that the instant applications for seeking appointment of the Arbitrator, as framed and filed by the applicant, is without any substance, deserves to be dismissed. The applicant/contractor has obtained Licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, from the appropriate Central Government for employment of contract labour for the said contract work. Any establishment under Section 2(1)(a) of the BOCW Act employs building workers directly or through a contractor in respect of which, the Appropriate Government under the Industrial Disputes Act, 1947 is the Central Government. A person employed in a mine is defined under Section 2(h)(ii) of the Mines Act, 1952 as a person engaged in a any activity or service connected with the development of a mine including the construction of its plant, but not including the construction of buildings, roads, works and other such works not directly connected with any existing or future mining operations. Section 2 (t) of the Mines Act, 1952 defines mine and a construction worker engages in the construction of building and other construction work in which, it is clear that, before this stage when construction of the project is completed the fact that, the mines is not running at an able stage, the BOCW is going on. The Mines Act, 1952 does not include manufacturing workers as mine workers in the definition of mine and manufacturing workers are not entitled to various provisions and benefits of the Mines Act. The Welfare Board has been constituted by the Government and does the work of regulation of the employment and service conditions of factory workers, health safety and other welfare conditions and implementation of welfare security scheme. In relation to the Section 2 (1) (d) of the BOCW, the judgment of the Hon'ble Supreme

Court is very clear in this regard, passed in Civil Appeal No. 6223/2016 in the matter of **Lanco Anpara Power Ltd. v. State of Uttar Pradesh & Others**, {(2016) 10 SCC 329} wherein, it is crystal clear that, the BOCW Act provides for levy of cess on the cost of construction. The project under the jurisdiction of the SECL, Bilaspur was allotted on contract basis to the petitioner contractor for project construction work and not for ongoing excavation operations. Hence, all the provisions of BOCW Act are applicable in the said construction work and it is provided to levy cess amount of 1 percent of the total construction cost. Therefore, there is no infirmity or illegality in the same, therefore, in view of the facts and circumstances of the case and also in view of the circulars issued by the State Government, the applicant is not entitled for any relief as claimed by it in the instant application and the instant application filed by the applicant, is devoid of merit or substance, thus, deserves to be dismissed at the threshold.

11. Rejoinder has been filed by the applicant controverting the submissions made by the respondent-SECL and the respondent-State, to submit that firstly, the all the issues raised as aforesaid constitute arbitrable disputes which have to be decided by the Arbitral Tribunal. All objections raised by the respondents, (including the objection that disputes/ issues on levy of BOCW Cess can be decided only under the machinery provided under relevant laws and that the said issue/ dispute has in fact already been decided in the present case), can and ought to be decided in arbitration, particularly when Section 16 of the Arbitration and Conciliation Act, 1996 has been construed in an expansive way to comprehend consideration of all preliminary objections of the party raising preliminary objections to the reference. This Court has a limited role at the referral stage as it is limited to examining whether an

arbitration agreement exists. Issue of non-arbitrability is not to be decided by the referral court at the referral stage but by the Arbitral Tribunal. Dispute in this case is not between the applicant and the State of Chhattisgarh. Dispute is on the scope and effect of clause 31 and 32 of ITB and as to whether SECL has a right to deduct BOCW Cess under the said clauses of ITB. Relationship between applicant and SECL is contractual and the disputes are purely contractual. The disputes pertain to applicability of clauses 31 and 32 of the ITB. The disputes do not pertain to any sovereign function of the State. The BOCW Cess Act or BOCW Cess Rules do not expressly or by necessary implication bar arbitration. In any case such issue is to be decided by the Arbitral Tribunal. Further, it was not at all necessary to implead respondent No.2 or Respondent No.3 or for that matter anybody other than the respondent No.1-SECL because the disputes are contractual disputes between the applicant and the respondent No.1 which calls for interpretation of the provisions of Clause No.31 and Clause No.32 of the ITB and in particular the applicability of those provisions in a situation where the BOCW Act or BOCW Cess Act or BOCW Cess Rules does not apply. In any event, non-signatory to an arbitration agreement can be added as party in the reference. Arbitral Tribunal is the most appropriate forum to decide the said aspect. The question as to whether a non-signatory to an arbitration agreement can be added as a party to the arbitration reference involves consideration of various complex tests, factors and considerations and ought to be left to be decided by the Arbitral Tribunal. In support of his contentions, reliance is placed on the decision rendered by the Apex Court in ***Interplay Agreements Between Arbitration Under Arbitration And Conciliation Act, 1996 And Stamp Act, 1899, In Re*** {(2024) 6 SCC 1}, ***Uttarakhand Purv***

Sainik Kalyan Nigam Limited v. Northern Coalfield Limited {(2020) 2 SCC 455}, ***Motilal Oswal Financial Services Limited v. Santosh Cordeiro and Another*** {2026 (2) SCC 801}, ***Cox And Kings Limited v. Sap India Private Limited And Another*** {(2024) 4 SCC 1}, ***Liforce Cryobank Sciences Inc. v. Cryoviva Biotech Pvt. Ltd. & Others*** {2024 SCC OnLine SC 3215}, ***ASF Buildtech Private Limited v. Shapoorji Palomji And Company Private Limited*** {(2025) 9 SCC 76}, ***Ajay Madhusudan Patel & Others v. Jyotirindra S. Patel & Others*** {(2025) 2 SCC 147} and a judgment of this High Court in ***Larsen & Toubro Limited v. State of Chhattisgarh*** {2018 scc online chh 317} and a judgment of Calcutta High Court in ***Anjane Kumar Lakhotia v. Maruti Maheshwari & Others*** {2025 SCC OnLine Cal 7956}.

12. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
13. In nutshell, the contention of the applicant is that since the construction work of Coal Handling Plant is connected with mining work, the Mines Act, 1952 would apply and the provisions of the BOCW Act, BOCW Cess Act or the BOCW Rules would not apply and the respondent-SECL had no authority to deduct 1% of the work value payable to the applicant from all bills towards worker's welfare under the BOCW Act, the BOCW Cess Act or the BOCW Rules as these Acts and Rules have no applicability in the case of the applicant. This is the precise dispute which, according to the applicant, needs to be adjudicated for which the applicant has prayed for referring the dispute to a Sole Arbitrator. On the contrary, the stand of the respondent-SECL is that the amount which is deducted by it does not benefit the SECL in any manner as it has to be transmitted in the account of the State Government. The SECL is merely

acting as a collecting agency and as soon as it is collected, the same is transmitted to the State Government. The contention of the State is that the project under the jurisdiction of the SECL was allotted on contract basis to the applicant for project construction work and not for ongoing excavation operations. Hence, all the provisions of the BOCW are applicable in the said construction work. A bare perusal of clause 31 and 32 of the ITB makes it amply clear that 1% of the work value payable to the contractors will be deducted from all bills towards the workers welfare under the BOCW Act and Rules. The said clause reads as under:

“31. An Amount of 1% (One percent) of the work value payable to the contractors will be deducted from all Bills towards the worker’s welfare under Building and other Construction Worker’s Welfare Cess Rules’ 1998 and Building and other Construction Worker’s Welfare Cess Act’ 1996 (As applicable in the States).”

“32. Instruction to Bidder shall be a part of contract agreement.”

14. There is no dispute that the GCC also contains clause 42.0 for settlement of disputes and clause 42A for settlement of disputes through arbitration. There is further no dispute with respect to the ratio laid down by the Apex Court in the cases cited by the applicant, however, applicability of the ratio depends on the facts of each case.
15. The contention of the applicant is that in light of Section 2(1)(d) of the BOCW Act, which defines the word ‘building or other construction work’, would not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948) or the Mines Act, 1952 (35 of 1952) apply. The applicant was from the very beginning aware that deduction to the tune of 1% shall be made from his running bills as the said conditions were the part of the agreement signed between the applicant and the respondent-SECL hence, the same

cannot be termed as a dispute which admittedly the applicant has agreed to before entering into the contract.

- 16.** The dispute sought to be referred by the applicant does not arise merely out of a contractual interpretation simpliciter, but essentially pertains to the applicability and operation of the provisions of the BOCW Act, BOCW Cess Act and BOCW Rules. The deduction of cess at the rate of 1% from the running bills of the applicant has been made pursuant to statutory provisions, Government notifications and the contractual stipulations consciously accepted by the applicant at the time of entering into the agreement. Clause 31 of the ITB specifically provided for such deduction and Clause 32 made the ITB an integral part of the contract agreement. The applicant, being fully aware of these conditions, participated in the tender process and executed the agreement without demur.
- 17.** The principal issue raised by the applicant is with regard to the applicability or otherwise of the BOCW Act and the consequential liability towards deduction of cess. Such determination necessarily involves examination of statutory provisions, the scope of exclusion contained in Section 2(1)(d) of the BOCW Act, and the authority of the State machinery under the enactment. The respondent-SECL has merely acted as a collecting agency for deduction and deposit of cess with the competent State authorities in terms of statutory mandate. The amount so deducted has already been deposited with the concerned authorities and SECL is not the beneficiary thereof. In the considered opinion of this Court, the dispute in question falls within the domain of the statutory framework governing levy and collection of cess and cannot be said to be a pure contractual dispute amenable to arbitration.

18. The disputes which are governed by a special statute and require adjudication by statutory authorities constituted thereunder are not ordinarily arbitrable. The BOCW Act and the BOCW Cess Act provide a complete mechanism in respect of levy, collection and adjudication relating to cess. The grievance raised by the applicant regarding wrongful deduction or non-applicability of cess is, therefore, required to be agitated before the appropriate statutory forum in accordance with law. Merely because an arbitration clause exists in the agreement would not *ipso facto* render every dispute arbitrable, particularly when the controversy substantially relates to determination of statutory liability.
19. This Court is also of the view that the present dispute does not warrant exercise of jurisdiction under Section 11(6) of the Act of 1996. The scope of reference sought by the applicant travels beyond the ambit of contractual interpretation and seeks adjudication on statutory applicability under special enactments.
20. Consequently, this Court does not find it to be a fit case for appointment of a Sole Arbitrator. As a result of the above discussion, these arbitration request petitions stand **dismissed**.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

Mere existence of an arbitration clause in an agreement does not ipso facto render every dispute arbitrable. Where the controversy substantially pertains to determination, adjudication, or enforcement of statutory liability, such disputes may fall outside the scope of arbitration and require adjudication by the competent statutory/forum authority.