IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION (ARBN) NO. 34 OF 2026

M/s. Sri Buddha – SVEC JV,
A joint venture of M/s. Sri Buddha
Engineering and Constructions Pvt. Ltd.
And M/s. S. V. Engineering Constructions
Office at H. No. 87- 1388, N. Sheshadri
Nagar, Housing Board Colony, Kurnool,
Andhra Pradesh – 518 002
projects@sribrc.co.in
acting through its authorized signatory
Shri Ranga Swamy G
R/o. Flat No. 102, Saikrupa Residency,
Street No. 06, Habsiguda,
Hyderabad- 500007. . . . APPLICANT

// V E R S U S //

Western Coalfields Ltd.,
A Company duly registered under the
Companies Act, 1956 having its registered
office at Coal Estate Building, Near
Gondwana Club, Civil Lines, Nagpur-440001
Acting through its Area General Manager,
Ballarpur (Department: Mining)
Tah. And Dist. Chandrapur.
agmballarpur@westerncoal.gov.in . . . NON-APPLICANT

Shri D. V. Chauhan, Senior Advocate a/w. Shri Deoul Pathak, Advocate for applicant.
Shri Nachiket G. Moharir, Advocate for non-applicant.

CORAM :- M. W. CHANDWANI, J.

DATED :- 07.07.2026.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels for the parties.

2. This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "Arbitration Act") seeking appointment of an Arbitrator for adjudicating the dispute which arose between the parties due to the work order dated 30.10.2024 and the agreement dated 11.01.2025 in relation to seven mining jobs prescribed in the Tender document.

3. The applicant is a joint venture incorporated by way of an understanding between M/s. Sri Buddha Engineering and Constructions Private Ltd and M/s. S.V. Engineering Constructions, Hyderabad, who are engaged in the work of construction and civil engineering activities. The said joint venture is being duly represented by Shri Ranga Swami G. The non-applicant, a subsidiary of Coal India Ltd., floated a Tender bearing no. GEM-2024/B/5127378, dated 04.07.2024 and invited bids from eligible bidders for a contract for performing seven jobs to be executed for a period of five years, three months and three days. The applicant participated in the said Tender process and was declared as a successful bidder. By letter dated 30.10.2024, the work order was issued in favour of the applicant. Consequently, on 11.01.2025 an agreement came to be executed

between the applicant and the non-applicant. The applicant started the work undertaken by it under the contract. On 19.07.2025, the non-applicant issued a communication i.e. "7 days notice" alleging that there is no improvement in performance and the applicant is not adhering to the schedule mutually agreed upon by the parties. The said notice was replied to by the applicant informing about the un-seasonal rain during the month of May as well as inadequate site conditions, which brought down the production of the applicant. The non-applicant issued a show-cause notice as to why the work allotted to the applicant should not be terminated with forfeiture of the security deposit comprising of performance guarantee or 20% value of the incomplete work should not be recovered and why the applicant should not be blacklisted for a year. In a personal hearing held on 15.09.2025, wherein the minutes of the meeting were also recorded, the non-applicant advised the applicant to commit to the schedule, failing which the contract would be terminated.

4. The application depicts that immediately on the next day, a new tender was floated by the non-applicant for the same work which was being undertaken by the applicant. The non-applicant, by a letter dated 27.10.2025 sent through email, informed that the work allotted to the applicant through its letter dated 30.10.2024 was terminated. Another communication dated 28.10.2025 informing the

same was sent. The applicant filed an application under Section 9 of the Arbitration Act before District Judge-9 &ASJ, Nagpur praying for *ad-interim* injunction restraining the non-applicant from invoking the bank guarantee. In the said proceedings, the Court directed the parties to maintain *status-quo*. The applicant then sent a notice of arbitration dated 01.01.2026 under Section 21 of the Arbitration Act for referring the dispute to an Arbitrator. The non-applicant did not act on it and hence, this application came to be filed under Section 11(6) of the Arbitration Act for appointment of an Arbitrator.

5. The non-applicant filed its reply *inter alia* blaming the applicant for failing to show any improvement on the shortcomings pointed out by the non-applicant and not adhering to the conditions of the Notice Inviting Tender (for short, "NIT"). It is also alleged that inspite of issuance of a letter, the applicant failed to make improvements and therefore, as per Clause 9 of the NIT which provides for termination, suspension, cancellation and foreclosure of contract, a show-cause notice was issued to the applicant. The reply of the applicant was found to be unsatisfactory and the applicant also admitted its poor performance. Hence, the contract of the applicant was terminated by a letter dated 28.10.2025. The reply of the non-applicant further states that the application was filed per-maturely. The non-applicant prayed for rejection of the application.

6. Heard Shri D. V. Chauhan, learned Senior Advocate appearing on behalf of the applicant and Shri N. G. Moharir, learned counsel appearing on behalf of the non-applicant.

7. The learned Senior Advocate appearing for the applicant submitted that the agreement provides for an arbitration clause; according to Clause 14 of the NIT, if there is a dispute between the parties, the same shall be referred to arbitration; Perusal of the said clause clearly indicates an arbitration agreement between the parties and therefore, the Court may appoint an Arbitrator. The learned Senior Advocate would further submit that Clause 13 of the NIT speaks about redressal of the dispute through conciliation and if the dispute still persists, Clause 14 of the NIT specifically provides that disputes/ differences shall be resolved through arbitration. It is submitted that even though there is a conciliation clause which provides that before referring the matter to arbitration, the parties must take recourse to conciliation, this cannot be a ground for rejection of the application. According to him, an appropriate order can always be passed directing the parties to avail conciliation and if conciliation does not succeed, then an additional order can be passed for referring the dispute to an Arbitrator. Therefore, he prayed for passing appropriate orders.

8. Mr. Moharir, learned counsel appearing for the non-applicant has argued on the same lines as the contentions raised in the affidavit-in-reply of the non-applicant. He submitted that the pre-requisite conditions for invoking the arbitration clause are not complied with. Additionally, he submitted that the decision of the Supreme Court in the case of ***BGM and M-RPL-JMCT (JV) Vs. Eastern Coalfields Ltd.***[1]***,*** wherein, the Supreme Court, relying on Clause 13 of the agreement between the parties to the judgment, which is in *pari-materia* with Clause 13 of the NIT executed between the parties to these proceedings, has held that by agreeing to the said condition in the agreement, the parties were *ad-idem* that their *inter-se* dispute should be resolved by conciliation and therefore, the agreement does not constitute an arbitration agreement. According to him, a similar clause is present in the agreement between the parties to the present application and hence, the decision in the case of ***BGM and M-RPL-JMCT (JV)*** (supra) is squarely applicable to the case in hand. He further submitted that due to the absence of an arbitration agreement between the parties, the application deserves to be rejected.

9. Reliance is also placed on the decision of the Supreme Court in the case of ***Jagdish Chander Vs. Ramesh Chander and others*** [2]. by the learned counsel for the non-applicant, wherein it has been

1 **2025 SCC Online SC 1471**
2 **2007 5 SCC 719**

observed that if the agreement contemplates further fresh consent of the parties for referring the dispute to arbitration, the clause is not intended to be an arbitration clause.

10. In case of ***Mahanandi Coalfields Ltd. and anr. Vs. IVRCL AMR JOINT VENTURE***[3], relied upon by the non-applicant, the Supreme Court observed that the Clause providing for dispute resolution mechanism at the company level does not comport with the essential attributes of an arbitration agreement in terms of Section 7 of the Arbitration Act.

11. The sum and substance of the argument of the learned counsel for the non-applicant is that if a clause in the terms provides for redressal of the dispute be through arbitration, that by itself cannot be termed to be an arbitration agreement, because the said clause gives a discretion to the parties to opt for arbitration, if they wish to. The same cannot be said to be a binding clause.

12. Replying to this submission canvassed by the learned counsel for the non-applicant, Mr. Chauhan, learned Senior Advocate submitted that the decision in the case of ***BGM and M-RPL-JMCT (JV)*** (supra) will not be applicable to the case in hand since, Clause 14 of the NIT provides that settlement of dispute shall be done through

3 **(2022) 20 SCC 636**

arbitration, which was not the case in hand before the Supreme Court. According to him, if there is ambiguity, the Court must rule in favour of arbitration to advance the cause of arbitration. To buttress his submissions, he relied on the decision of the Co-ordinate Bench of this Court in the case of ***Generic Engineering Construction and Projects Ltd. VS. Maharashtra Maritime Board*** [4].

13. To appreciate the rival contentions urged on behalf of the parties and to find out whether the NIT contains an arbitration agreement or whether it is just an enabling provision for the parties to elect whether to refer the dispute for arbitration, it will be apt to reproduce the relevant Clauses i.e. Clause nos. 13 and 14 of the NIT, which read thus:-

> *"13. SETTLEMENT OF DISPUTES WITH THE CONTRACTOR*
>
> *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 (thirty) 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 be referred to Area GM/GM, HOD(C). If difference still persist the dispute shall be referred to a committee constituted by the owner. The committee shall have one member of the rank of Director of the company who shall be chairman of the committee.*

4 **2026 SCC ONLINE BOM 2733**

If differences still persist, then matter shall be resolved through conciliation.

Conciliation:

The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party.

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

Disputes or differences relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprise (CPSES) / Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs & Excise Department), shall be taken up by either party for its resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 05/003/2019-FTS-10937 dated 14th December 2022 and the decision of AMRCD on the said dispute will be binding on both the parties.

In case of parties other than above Agencies, the redressal of the dispute may be sought through Arbitration (THE ARBITRATION AND CONCILIATION ACT, 1996 as amended by AMENDMENT ACT of 2015).

14. Settlement of Disputes through Arbitration

i) Normally, there should not be any scope of dispute between the employer (department) and contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, disputes may arise during the progress of the contract between the employer (department) the contractor.

Therefore, the conditions governing the contract shall contain suitable provision for settlement of the disputes / differences binding on both the parties.

ii) Mode of settlement of such disputes/differences shall be through Arbitration. However, where dispute/difference arises, *then, depending on the position of the case, either the employer (department or the contractor shall give notice to the other party of its intention to commence arbitration. applicable arbitration procedure will be as per the Arbitration and Conciliation Act, 1996 as amended Amendment Act of 2015.*

iii) Venue of Arbitration: The venue of arbitration shall be the place from where the contract has be issued.

iv) Applicable Law: The contracts shall be interpreted in accordance with the laws of the Union of India.

v) Legal Advice:While processing a case for arbitration, the purchase organization is to take legal adv at appropriate stages from competent authorities viz their Legal Department.

vi) Following clause shall be included in the General Conditions of the Contract (GCC):

Sole Arbitration Clause:

In the event of any question, dispute or difference arising under these terms & conditions or condition contained in this contract or interpretation of the terms of, or in connection with this Conte (except as to any matter the decision of which is specially provided for by these conditions), the same shall be referred to the sole arbitration of a person, appointed to be the arbitrator by the Chairman, CMD of Subsidiary Company (as the case may be). The award of the arbitrator shall be final binding on the parties of this Contract.

a) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to for any reason, or his/her award being set aside by the court for any reason, it shall be lawful the Chairman, 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 Chairman, 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.

Subject as aforesaid, Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015, and the rules thereunder and any statutory modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this clause.

The venue of arbitration shall be the place from which the contract is issued or such other place as the Chairman, *CIL/CMD of Subsidiary Company (as the case may be) at his discretion may determine.*

vii) Contracts with Partnership firm/ Joint Venture/Consortium:

A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. Therefore, while entering into a contract with partnership firm/Joint Venture/Consortium care should be taken to obtain consent of all the partners to the arbitration agreement.

A suitable clause for obtaining consent of all the partners to the arbitration agreement shall be included in the General Conditions of the Contract (GCC).

viii) In cases where CIL/ Subsidiary has challenged an arbitral award and as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by CIL/ Subsidiary to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to CIL/ Subsidiary should the subsequent court order require refund of the said amount.

The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of CIL/ Subsidiary as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of CIL/ Subsidiary may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and CIL/Subsidiary. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.

The only circumstances in which such payment need not be made is where the contractor declines, or is unable to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

ix) Arbitration /court awards should be critically reviewed. In cases where there is a decision against CIL/Subsidiary the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and *there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration/court cases has resulted in payment of heavy damages/compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.*

x) Legal department of CIL/Subsidiary should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up by legal department of CIL/ Subsidiary to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal /further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award."

14. To avoid litigation between the parties, Clause 13 of the NIT provides for making all efforts to settle the dispute at the primary level by writing to the Engineer Incharge for settlement of dispute within 30 days from the date on which the dispute arises. Initially, the dispute shall be referred to the GM, HOD. If it does not get resolved, then it should be referred to the Committee constituted by the Owner. If the differences still persist, then the matter shall be resolved through conciliation. If the dispute still persists even after conciliation, then the last sentence of Clause 13 of the NIT provides that redressal of the dispute may be sought through arbitration. Whereas, Clause 14(ii) of the NIT specifically provides the modes of settlement of such

disputes/differences, which shall be through arbitration. When a dispute arises then, depending on the position of the case, either the employer or the contractor shall give a notice to the other side of its intention to commence arbitration. The procedure will be governed by the Arbitration Act.

15. In the decision in the case of ***BGM and M-RPL-JMCT (JV)*** (supra), though Clause 13 of the agreement was in *pari-materia* with Clause 13 of the NIT in the present case; however, here in the present case, apart from Clause 13 there is Clause 14 of the NIT which specifically provides that the mode of settlement shall be through arbitration, if conciliation fails. Had there been no Clause 14 in the NIT, the present case would have been covered by the decision in the case of ***BGM and M-RPL-JMCT (JV)*** (supra). In view of Clause 14 of the NIT, the decision in the case of ***BGM and M-RPL-JMCT (JV)*** (supra) would not be applicable to the facts of this case.

16. Here, Clause 13 on one hand, by using the word "may", gives a discretion to the parties to opt for arbitration. If the said condition is read in isolation, it may give an impression that this condition enables the parties to decide whether the dispute should be referred to arbitration or not. The parties may not be *ad-idem* in referring the dispute to arbitration and consequently, it can be said that

no arbitration agreement exists between the applicant and the non-applicant. However, the subsequent Clause 14 of the NIT prescribes that the mode of settlement shall be through arbitration. Clause 14 further provides the procedure to be followed for arbitration. Therefore, Clause 14 mandates the parties to opt for arbitration.

17. Thus, there are conflicting conditions in Clauses 13 and 14 of the NIT. In the last sentence of Clause 13, the word "May" suggests discretion to the parties to opt for arbitration but Clause 14 mandates that in case of failure of conciliation proceedings, the dispute shall be referred to arbitration. The former condition gives a discretion to the parties to opt for arbitration, whereas the latter condition contemplates that the dispute shall be resolved through arbitration. It is not the case that there was no agreement to arbitrate. Here, it is a case of conflicting conditions with regard to arbitration. The question here is which Clause will prevail. In view of these differentiating facts, the decision in case of ***Jagdish Chander*** (supra) relied upon by the non-applicant will not be applicable here. It appears that the NIT is not properly drafted, which has resulted in confusing and conflicting clauses.

18. The golden rule of interpretation of an agreement is to give effect to the intention of the parties. Though, in the last sentence

of Clause 13 the word "May" has been used but, Clause 14 along with a mandate to arbitrate, also provides for appointment of an Arbitrator, place of arbitration, appointment of new Arbitrator in case of death of an Arbitrator and other conditions of arbitration in detail. That apart, neither in the reply filed by the non-applicant before the District Judge, Nagpur in the proceedings filed by the applicant under Section 9 of the Arbitration Act, nor in the reply filed before this Court, the non-applicant has objected to the arbitration clause. The only objection which has been raised is that the application is pre-mature. Therefore, the attending circumstances and the material available on record suggests that the parties had intended to agree that in case of failure to resolve the dispute amongest themselves or through conciliation proceedings, the matter shall be referred to arbitration.

19. Additionally, it is worthwhile to mention that when there are conflicting and confusing clauses, the Court shall rule in favour of arbitration, not giving weightage to confusing clauses. The Court should ignore the clauses of the contract which may create confusion about existence of the agreement, since arbitration is aimed at removing bottlenecks or declogging the courts from a docket explosion. In such cases, the Court should rule to advance arbitration. Russell on Arbitration (21^{st} Edn.) opined, relying on ***Astro Vencedor***

Compania Naviera S.A. Vs. Mabanaft GmbH [5], that the Court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the parties have agreed.

20. In this regard, a reference can also be made to the decision of this Court in the case of ***Generic Engineering Construction and Project Ltd.*** (supra) which says that if there are contradictory terms in an agreement, the term providing for an arbitration clause will override the other terms.

21. Since, here apart from the mechanism of dispute resolution at the company level, there is Clause 14 which mandates resolution of dispute by arbitration, the case of ***Mahanandi Coalfields Ltd.*** (supra) relied upon by the non-applicant is not applicable to the facts of the present case.

22. This takes me to the objection raised by the non-applicant that the agreement does not straight away provide that recourse be taken to arbitration, unless Clause 13 of the NIT is exhausted. It is contended that the applicant did not opt for resolving the dispute through conciliation first and therefore, the arbitration clause cannot be directly invoked unless, resolution of dispute by way of conciliation is exhausted. It is also submitted that the NIT contains Clause 13 which

5 **(1970) 2 Lloyd's Rep 267**

prescribes availment of conciliation before taking recourse to the arbitration mechanism and therefore, the application is pre-mature.

23. No doubt, Clause 13 of the NIT provides for resolution of disputes/differences by the parties through conciliation. If the dispute could not be resolved at the department level and the conciliation also fails, then the arbitration clause shall be invoked. However, only on that ground, the application under Section 11 of the Arbitration Act cannot be rejected. An additional order can always be passed to first advert to the mode of conciliation to resolve dispute. If the dispute could not be resolved, then the same shall be referred to arbitration. Therefore, I do not find substance in the submission of the learned counsel for the non-applicant that when the condition precedent is not fulfilled, the application filed under Section 11 has to be dismissed, leaving the parties to file an application under Section 11 of the Arbitration Act only after fulfillment of the condition precedent. All the objections raised by the non-applicant can be redressed by passing appropriate orders.

24. Hence, I proceed to pass the following order:-

i) The parties shall in the first instance, refer the dispute between them for conciliation. Mr. Harish Thakur, learned counsel is appointed as Conciliator in this matter.

ii) If the reference to the Conciliator does not succeed in resolving the dispute and differences between the parties, the same shall be referred for arbitration to Shri Justice R.K. Deshpande (Retd.), subject to consent and disclosure statement by the learned Arbitrator.

iii) The application is disposed of in the abovesaid terms. No order as to costs.

(M. W. CHANDWANI, J.)

RR Jaiswal