

cf-200 (3)

IN THE HIGH COURT OF JUDICATURE : CHHATTISGARH : BILASPUR

M.C.C. NO : 150 OF 2005 SINGLE BENCH

APPLICANT

1978/03
Presented by Shri. Manoj Kumar
dated 26/7/05

: M/s Dolomite Mining Corporation
Baradwar, Distt. Janjgir-Champa
Registered Partnership Firm,
Through : The Manager and
Attorney,
Shri Bindeshwari Prasad Singh
aged 62 years
s/o Shri Ishwar Singh
Manager Dolomite Mining
Corporation r/o Baradwar,
District Janjgir -Champa (C.G.)

-VERSUS-

RESPONDENTS

1. M/s Bharat Aluminium
Company Ltd.
Through :
Chairman- cum- Managing
Director,
office : Balco Nagar,
Distt. Korba (C.G.)
2. Bharat Aluminium Ltd.
BALCO:
A Sterlite Group Company
(a) Registered Office:
Core-6,
Scope Office Complex
7 Lodhi Road,
New-Delhi : 110-003
(b) P.O. Balco Township
:Korba:Distt: Korba
495-684

APPLICATION FOR MODIFICATION OF ORDER PASSED BY THE
HON'BLE THE CHIEF JUSTICE IN ARBITRATION CASE BETWEEN
THE PARTIES M.C.C. No. 761/2000 ON 08-07-2000.

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HIGH COURT OF CHHATTISGARH : BILASPUR

M.C.C. NO. 150 OF 2005

M/s. Dolomite Mining Corporation

Versus

M/s. Bharat Aluminium Company Ltd. and Anr.

Order

Post for judgment on 26/09/06

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR**M.C.C. NO. 150 OF 2005**

(121)

M/s. Dolomite Mining Corporation**Versus****M/s. Bharat Aluminium Company Ltd. and Anr.**

Present :- Shri Anurag Shrivastava, Counsel for the applicant.

Shri Prashant Jaiswal, Sr. Counsel with Shri Ali Asgar, Counsel for the respondent No. 1.

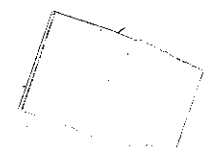
ORDER**Per Dharendra Mishra, J**

This M.C.C. has been registered on the basis of the application preferred by the applicant to modify the order dated 8-7-2005 passed in M.C.C. No. 761/2000 whereby on the petition of the present applicant under Section 11 of the Arbitration and Conciliation Act, 1996, the Indian Council of Arbitration has been appointed as Arbitrator in the matter arising out of a contract agreement between the applicant and the respondents for mining of 1,80,000 M.T. of Bauxite from Mainpat Mines and transportation thereof to the Aluminium Plant of the respondents at BALCO Nagar, Korba and it has been prayed that in place of Indian Council of Arbitration, any of the retired Judge of High Court settled in Madhya Pradesh or Chhattisgarh be appointed as Arbitrator.

2. Learned counsel for the applicant submits that as per amended rules of the Indian Council of Arbitration, Indian Council of Arbitration recommends to all parties desirous of making reference to arbitration by the Indian Council of Arbitration the use of the following arbitration clause in writing in their contracts:-

"any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties."

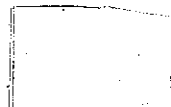
However, from perusal of the agreement particularly Clause 9.2.1 of General Conditions of Contract for construction works, which was part of the said agreement provided for reference of disputes and differences between the parties to an arbitrator, does not conform to the arbitration clause which is a must for referring the dispute to the Indian Council of Arbitration. Since this provision was not brought to the notice of Hon'ble the Chief Justice, the designated authority under Section 11(6) of the Arbitration and Conciliation Act, 1996, therefore, Indian Council of Arbitration has been appointed as sole Arbitrator. He further submits that the amount of claim is small sum of Rs. 41,69,436/- only and the arbitration proceeding before the Indian Council of



Arbitration is exorbitant, and therefore, considering the fact that arbitration clause in the agreement does not conform to the arbitration clause recommended by the Indian Council of Arbitration, the order may be modified and instead of Indian Council of Arbitration, any retired Judge of High Court based at Madhya Pradesh or Chhattisgarh may be appointed..

3. On the other hand, learned counsel for the respondent opposing the application submits that the arbitration clause referred to by the applicant is only recommendatory and prayer of the parties to refer their dispute arising out of the contract agreement containing arbitration clause can be referred to the Indian Council of Arbitration for arbitration and there is no legal bar as such. He further submits that except on the grounds mentioned in Section 12 and Section 15 of the Arbitration and Conciliation Act, 1996, the mandate of an Arbitrator cannot be terminated or withdrawn on application of any party to the agreement.

4. I have heard the learned counsel for the parties. I have gone through the relevant provisions of the Arbitration and Conciliation Act, 1996 as also the Rules of Arbitration of Indian Council of Arbitration, under which the proceeding of arbitration is conducted before the Indian Council of Arbitration when the matter is referred



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for arbitration to the said council. So far as the submission of the learned counsel for the applicant that arbitration clause of the agreement in question does not conform to the recommended arbitration clause, is concerned, from a bare perusal of clause referred to by the applicant, it is evident that the Indian Council of Arbitration recommends the parties desirous of making reference to arbitration by the Indian Council of Arbitration, the use of the arbitration clause which has been referred to in the foregoing paragraphs. In the Rules of Arbitration of Indian Council of Arbitration, nowhere it is mentioned that in absence of arbitration clause as recommended by the council, the same cannot be referred to the Indian Council of Arbitration, therefore, I am of the view that there is no force in the contention of the counsel for the applicant that in this ground the order of reference requires modification. So far as the other grounds of inconvenience or arbitration proceedings being expensive are concerned, since the matter has been referred by this Court to the Indian Council of Arbitration for the purpose of arbitration with consent of the parties, the mandate of Arbitrator so appointed cannot be terminated except on the grounds mentioned in Section 12 or 15 of the Act of 1996. Since the applicant has not been able to make out a ground mentioned in these sections and further since the respondent is not agreeable to the change of Arbitrator at

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the instance of the applicant, the instant application for modification of the order dated 8-7-2005 and substituting the already appointed arbitrator with any other arbitrator cannot be allowed.

5. In the result, the application is rejected.

Sd/-
Dhirendra Mishra
Judge