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## \* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.02.2026

+ O.M.P.(I) (COMM.) 41/2026, I.A. 2925/2026 & I.A. 2926/2026  
TWENTY FIRST CENTURY MINING PRIVATE LIMITED  
.....Petitioner

Through: Mr. Kirtiman Singh, Senior Advocate with Mr. Sanjeev K. Kapoor, Ms. Saman Ahsan, Ms. Swastika Chakravarti and Ms. Mimansha Durgapal, Advocates.

versus

NOMINATED AUTHORITY MINISTRY OF COAL GOVERNMENT OF INDIA & ANR. ....Respondents

Through: Mr Abhishek Gupta, CGSC with Mr. Kumar Kartikeya, Mr.Dhananjay Singh and Mr.Chankya Kene, Advocates for R-1  
Mr. Santosh Kumar Rout, Advocate for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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**JUDGEMENT (ORAL)**

1. The present Petition, under Section 9 of the Arbitration and Conciliation Act, 1996 [“Act”], has been filed seeking the following prayers:

“(a) Pass an injunction restraining Respondent No. 1, during the pendency of the proceedings between the Petitioner and Respondent No.1, from invoking/appropriating/encashing the Petitioner’s Bank Guarantee with reference no. 0896524BG0000547, as amended on 17 May 2025, whether in whole or in part, in furtherance of the recommendation of the Scrutiny Committee passed in its meeting dated 6 November 2025



and 7 November 2025, and Respondent no. 1's letter forwarding the same dated 3 December 2025;

(b) Pass and order directing Respondent No. 2 to refuse and return any request from Respondent No. 1 for appropriating a part of the Petitioner's Bank Guarantee with reference no. 0896524BG0000547, as amended on 17 May 2025;"

2. Learned Senior Counsel appearing on behalf of the Petitioner would draw this Court's attention to the Letter dated 03.12.2025 and submit that as per Para 3 thereof, the Petitioner herein was granted an opportunity to submit a representation in respect of the recommendation by the Scrutiny Committee for invocation of the Performance Bank Guarantee dated with reference no. 0896524BG0000547, as amended on 17.05.2025.

3. He would submit that on the basis of the said Letter, various representations were made and the latest of which is the detailed representation dated 17.12.2025, and no response has been forthcoming from the Respondents herein.

4. The learned Senior Counsel appearing on behalf of the Petitioner would also draw this Court's attention to Clause 10 of the Coal Block Development and Production Agreement [“CBDPA”] dated 17.08.2022, which reads as follows:

#### **“10. EFFICIENCY PARAMETERS**

10.1. The conduct of mining operations at the Coal Mine shall be subject to the Efficiency Parameters In bona fide cases of delays not attributable to the Successful Bidder, the Nominated Authority will decide on case to case basis the extension of timeline in Efficiency Parameters. For the said purpose, the Nominated Authority may refer the matter to Scrutiny Committee which will consider the delay caused on case to case basis and furnish its recommendation to the Nominated Authority for taking a decision,

10.2. The Successful Bidder would provide periodic information to the Nominated Authority and the Central Government regarding compliance with the Efficiency Parameters in the manner stipulated in Clause 7 (INFORMATION)



10.3. Any non-compliance with the Efficiency Parameters would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than three instances, such non-compliance may also result in termination of this Agreement as provided in Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION)”

5. He would submit that, in terms of said Clause, it is apparent that the Nominating Authority is to take a decision in respect of the non-compliance of any deficiency parameters that have been set out in Schedule C of the CBDPA.

6. He would further draw the attention of the Court to Clause 27 of the CBDPA, which sets out the Dispute Resolution Process, and in particular Clause 27.6 thereof, which reads as follows:

#### **“27. GOVERNING LAW AND DISPUTE RESOLUTION**

27.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India, without regard to its principles of conflicts of laws.

27.2 Any dispute, controversy or claim arising out of or relating to or in connection with the Agreement including a dispute as to the validity or existence of this Agreement, or any breach or alleged breach thereof, shall be settled through mutual discussions between the Parties.

27.3 In this regard, the Successful Bidder shall nominate an officer not below the rank of a director to participate in the discussions on its behalf. In the event that the Successful Bidder fails to nominate an officer in the manner required under Clause 27.2; or the Parties are unable to resolve any dispute in accordance with Clause 27.2 within a period of 30 Business Days starting from the date on which the first notice of dispute was provided by either Party, such dispute shall be resolved in accordance with Section 27 of the Act.

27.4 There shall be 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration Rules. The arbitrators' award (the "Award") shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay. This Agreement and the rights and obligations of the Parties shall remain in full force and effect,



pending the Award in any arbitration proceedings hereunder.

27.5 The Parties agree that an Award may be enforced against them and their assets wherever situated.

27.6 It is expressly agreed between the Parties, that any existence of a dispute shall not affect in any manner any of the rights of the Nominated Authority under this Agreement, including without limitation the right to appropriate Performance Security or terminate this Agreement, until a final determination in this regard is made.

27.7 The provisions contained in this Clause 27 shall survive the termination of this Agreement.”

7. Learned counsel appearing on behalf of the Respondents, on advance notice, would submit that the present reliefs as sought should not be granted since the Performance Guarantee is an unconditional Bank Guarantee.

8. He, too, places reliance on Clause 27.6 of the Dispute Resolution Clause to contend that the existence of a dispute cannot in any manner affect the right of the Respondents to invoke the said bank guarantee.

9. This Court has heard the learned counsel for the parties and is of the opinion that Clause 27.6 refers to the right of the Nominated Authority to appropriate the performance security till a final determination in regard to the disputes as between the parties is given. The “final determination” as referred to in the said Clause, in the opinion of the Court would be relatable to the decision of the learned Arbitral Tribunal & not of the Nominated Authority.

10. However, and is apparent, a decision by the Nominated Authority is yet to be arrived at. The Letter dated 03.12.2025 is categoric insofar as it grants the Petitioner an opportunity to submit a representation, and in terms of the Petitioner has submitted a representation dated 17.12.2025.



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11. Admittedly, no decision has been taken by the Nominated Authority till date.

12. In view of the fact that the said Letter envisages the submission of a representation by the Petitioner, and on which the Nominated Authority is yet to take a decision, this Court is of the view that Clause 27.6 cannot in any manner be pressed into the service for the purpose of contending that the Respondents can at this point in time invoke the Performance Guarantee.

13. Resultantly, this Court is of the view that till such time as the Nominated Authority takes any decision in respect of the representation as given in pursuance of the communication dated 03.12.2025, the Performance Guarantee shall not be invoked.

14. It is also directed that the Respondents shall, upon the Nominated Authority taking a decision on the representation of the Petitioner, notify the Petitioner within a period of one week of the said decision, and till which time the Respondents will not invoke the Performance Guarantee.

15. In view of the aforesaid direction, the present Petition, along with pending application(s), if any, stands disposed of.

**HARISH VAIDYANATHAN SHANKAR, J.  
FEBRUARY 3, 2026/JYH/va**