

05 27.03.2019 Heard learned counsel for the parties.

By way of this writ petition, the petitioner no. 1, which is a company named and styled as M/s Bhushan Energy Limited and petitioner no.2, have challenged the notice dated 30.09.2016 (Annexure-1 series) issued by the General Manager (S&M), Mahanadi Coalfields Ltd., Burla, Sambalpur directing it to deposit the differential amount of District Mineral Foundation Contribution against coal lifted during the period from 12.01.2015 to 19.10.2015.

This Court vide order dated 11.05.2017 while issuing notice to the opposite parties had passed the following order:

“Connect with W.P.(C) No. 14668 of 2016.

2. The submission of learned counsel for the petitioner is that the petitioner does not hold any mining lease or prospecting lease and is merely a trader.

3. The petitioner is aggrieved by imposition of District Mineral Foundation Fund and the National Mineral Exploration Trust Fund which is applicable only in the case of a Mining Lease Holder or Prospecting Mining Lease Holder. It is submitted that the provision for imposition of such contribution was provided under Sections 9-B and 9-C of the Minor Mineral (Development and Regulation) Act, 1957 and such provisions came into force with effect from 12.01.2015 and notified on 20th October, 2015, and the District Mineral Foundation (DMF) constituted on 06.2.2016. As such, no recovery can be made from the petitioner for a period prior to the notification dated 06.2.2016, even if the petitioner is found liable for payment of any amount.

4. Shri A.K. Bose, learned Assistant Solicitor General of India has put in appearance on behalf of opposite parties 2 and 3 and Shri R.K. Mohapatra, learned Government Advocate appears for the State-opp. party no.1.

5. Steps to serve opposite parties 4 and 5 be taken by Speed Post with A.D. within three days. Office shall send notice fixing an early returnable date.

6. All the opposite parties may file their counter affidavits by the next date.

List this matter on the date fixed in the notice.

7. Having regard to the facts and circumstances of the case and keeping in view the submission of the learned counsel for the petitioner, we are of the opinion that the petitioner has made out a prima facie case for grant of interim protection. Accordingly, it is directed that the recovery pursuant to the notice dated 30.09.2016 (Annexure-1 series) issued by opposite party No.4 shall remain stayed till the next date.”

Now the issue is concluded by the Hon’ble Supreme Court in the case of ***Federation of Indian Mineral Industries and others -v- Union of India and another***, reported in (2017) 16 SCC 186, wherein the Hon’ble Supreme Court at paragraph-52.5 had observed as follows:

“Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20.10.2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later.”

In that view of the matter, since the issue is concluded, the DMF is required to be collected only from the date on which it came into force. The State of Odisha as agreed between the parties has come into force from 6.2.2016. In that view of the matter, the collection prior to that is contrary to the decision of

the Hon'ble Supreme Court and is required to be either refunded or to be adjusted against future transaction.

The DMF collected prior to 6.2.2016 will be either refunded or adjusted as requested by learned counsel for the petitioner to the authority.

We have not decided the dispute for payment of the petitioner to the Coalfield. It will be open for the petitioner to agitate that issue before the competent Court. In that view of the matter, no further recovery will be made prior to 6.2.2016.

However, learned counsel for the petitioners contended that during pendency of the writ petition, insolvency resolution process was initiated under the provisions of Insolvency and Bankruptcy Code, 2016 before the NCLT, Principal Bench, New Delhi and the same is pending.

In that view of the matter, it is made clear that the benefit of this order will be granted to the successor, if any, of the petitioners.

This writ petition stands allowed to the aforesaid extent.

Urgent certified copy of this order be granted on proper application.

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K.S. JHAVERI
(CHIEF JUSTICE)

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K.R. MOHAPATRA
(JUDGE)

bks/jm

Starts from 1.12. In view of the fact that the matter has been pending before the NCLT and the management ((i) proceedings before NCLT were pending and someone was disposed of and other is pending) It is made clear that the order passed in this matter will be entitled to the successor who claimed the benefit of this petition.