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07.05.2026  
Court. No. 25  
D.Hira

**WPA 10773 of 2026**

CESC Limited  
Vs.  
Coal India Limited & Anr.

Mr. S. N. Mukherjee, ld. Sr. adv.,  
Mr. Ratnanko Banerjee, ld. Sr. Adv.,  
Mr. Sounak Mitra,  
Ms. Vaibhavi Pandey,  
Mr. Soumabho Ghose,  
Ms. Tiasha Gupta,

... for the petitioner

Mr. Debnath Ghosh, Sr. Adv.,  
Mr. Biswaroop Mukherjee,  
Mr. Pradipta Bose,  
Ms. Madhumauti Chakraborty.

... for the respondent no. 2

Mr. Varun Kedia,  
Mr. Avee Jaiswal.

... for the respondent no. 1

1. Affidavit-of-service filed in Court today is taken on record.
2. The petitioner has filed the present application challenging the communication dated 4<sup>th</sup> May, 2026 wherein the Coal India Limited, respondent no. 1 has demanded an amount of Rs.9,00,00,000/- (Rupees nine crores) from the petitioner as pending dues.
3. On 13<sup>th</sup> September, 2022, the Coal India Limited has issued a notice to the ECL, BCCL and MCL intimating that any coal quantity supplied to CESC for the above mentioned EUPs in 2015-2016 and 2016-2017, may be considered as excess supply and accordingly, a premium of 40% may be

charged realized by supplying subsidiaries i.e., ECL, BCCL and MCL.

4. It is further reflected in the said order that since 40% flat premium is to be charged to M/s. CESC for the full quantity, therefore, no PI shall be applicable. PI charged, if any, by the concerned CIL subsidiaries during that period for the above EUPs, may be adjusted from the aforesaid bills and the bills are to be generated after receipt of the directives, therefore, interest, if any, shall be charged, from the date of billing as per the extant policy.
5. The petitioner has challenged the communication dated 13<sup>th</sup> September, 2022 by way of writ petition being WPA 249 of 2023 in which by an order dated 5<sup>th</sup> January, 2023, this Court has restrained the respondent for taking any coercive steps in terms of the impugned communication dated 13<sup>th</sup> September, 2022.
6. The Coal India Limited has preferred an application being CAN 1 of 2023 for vacating the said order but after hearing the parties, the Coordinate Bench of this Court has dismissed the said application and the interim order is still continuing till today and the writ petition is pending before this Court for adjudication.
7. The petitioner submits that as on date, an amount of Rs.11,50,83,315/- is receivable by the petitioner

from ECL but without proper reconciling, the ECL has issued the impugned communication claiming an amount of Rs.9,00,00,000/- (Rupees nine crores) as dues against the petitioner.

8. He further submits that there is no dues pending against the ECL, on the other hand, an amount of Rs.11,50,83,315/- is receivable from the ECL but without any justification, the ECL has demanded an amount of Rs.9,00,00,000/- (Rupees nine crores).
9. Mr. S. N. Mukherjee, learned senior counsel appearing for the petitioner submits that the petitioner is supplying the electricity to Kolkata as well as Howrah District and if the ECL stop supplying of the coal to the petitioner against the alleged demand of Rs.9,00,00,000/- (Rupees nine crores), the petitioner will not be in a position to supply electricity at Kolkata and Howrah district.
10. He prays for stay of the operation of the impugned communication dated 4<sup>th</sup> May, 2026.
11. *Per contra*, learned counsel appearing for the respondent no. 1 submits that the writ application filed by the petitioner is not maintainable as this is the money demand and is a commercial dispute.
12. He further submits that the petitioner is claiming that an amount of Rs.11,00,00,000/- (Rupees eleven crores) is receivable from the respondent and the respondent is claiming an amount of

Rs.9,00.00.000/- (Rupees nine crores) from the petitioner which is disputed question of fact, which cannot be decided in the writ jurisdiction.

13. In support of his case, learned counsel for the respondent no. 1 has relied upon an unreported judgment passed by the Hon'ble Division Bench in the case of **Coal India Limited vs. Prakash Roadlines Corporation & Ors.** passed in **A.P.O. No. 3 of 2003** dated 16<sup>th</sup> March, 2009 and submits money claim between the parties, suit cannot be entertained in the writ jurisdiction and parties should be relegated to the civil suit for their respective claim.

14. The respondent no. 1 has also relied upon the judgment in the case of **Municipal Council Gondia vs. Divi Works and Suppliers, HUF and Ors.** reported in **2022 SCC OnLine SC 247** and submits that in the said case also the Hon'ble Supreme Court has held that the writ application under Article 226 of the Constitution of India cannot be converted into the civil suit which is the money claim between the parties.

15. Learned counsel appearing for the respondent no. 1 further submits that several communications have been made between the petitioner and the respondent with regard to reconciliation of the amount due but the petitioner failed to come forward to pay the amount due to the respondent

and thus the respondent has no other alternative but to call for the petitioner for payment of an amount of Rs.9,00,00,000/- which the petitioner is liable to pay to the respondent.

16. Mr. Debnath Ghose, learned senior counsel appearing for the respondent no. 1 further submits the judgment relied by the petitioner on which the petitioner has got the interim order which is still continuing till date is not applicable in the present case as the said case is only with regard to the performance guarantee and not with regard to the money claim.

17. Heard the learned counsel for the respective parties, perused the materials on record and the documents relied by the parties.

18. Admittedly, the petitioner has paid an amount of Rs.21.51 crores. As per the calculation made by the petitioner, an amount of Rs.11,50,83,315/- is recoverable from the ECL. The reconciliation statement no. 3564 for the period of 1<sup>st</sup> April, 2022 to 31<sup>st</sup> March, 2023 reveals that the closing balance is Rs.,29,55,72,845/- along with the said reconciliation statement, break up of closing balance and remarks by the Coal Company is enclosed. Wherein it is found that add on bill for the financial year 2015-2016 is Rs.154605766.31 and add on bill for the financial year 2016-2017 is Rs.64847487.17. The respondent has not placed

any further reconciliation to show that any amount of Rs.9,00,00,000/- is due and payable. Thus, this Court finds the writ application is to be decided only after exchange of affidavits with regard to claim and counter-claim. Whether the petitioner is required to pay Rs.9,00,00,000/- or the Rs.11,00,00,000/- is receivable by the petitioner.

19. As regard to the maintainability is concerned, the coordinate Bench of this Court while deciding the application filed by the petitioner for vacating the interim order in writ petition no. 249 of 2023 has categorically held that in the case of ***Maharashtra Chess Association vs. Union of India & Ors.*** reported in ***(2020) 13 SCC 285*** held that the exclusion of the writ jurisdiction of a High Court, a Constitutional Court, is materially different from exclusion of jurisdiction of civil courts in original suits or proceedings. Contractual exclusion clause cannot *ipso facto* exclude jurisdiction of the High Court under Article 226 which is extraordinary and discretionary in nature. Contractual exclusion is only one factor in the determination by the High Court.

20. In the case of ***Unitech Limited & Ors. vs. Telangana State Industrial Infrastructure Corporation Limited (TSIIC) & Ors.*** reported in ***2021 SCC OnLine SC 99*** the Hon'ble Supreme Court has held that the jurisdiction under Article

226 is not excluded in contractual matters, although such plenary power must be used with circumspection when other remedies have been provided by the contract.

21. In the present case, this Court finds that the earlier round of litigation the petitioner has filed the writ application challenging the communication dated 13<sup>th</sup> September, 2022, this Court has decided the issue and entertained the writ application. Thus, this Court is of the view that the writ application is also maintainable.
22. Considering the above, this Court finds that the petitioner has made out a prima facie case and balance of convenience and inconvenience in favour of the petitioner and at this stage if any interim order is not passed there is every possibility that the power supply of the Kolkata and the Howrah district will be affected.
23. Accordingly, the respondents have restrained from giving effect or further effect to the communication dated 4<sup>th</sup> May, 2026 till 25<sup>th</sup> June, 2026 or until further orders, whichever is earlier.
24. The respondents are directed to file affidavit-in-opposition within four weeks. Reply, if any, thereto be filed within two weeks thereafter.
25. List this matter on 25<sup>th</sup> June, 2026 under the heading "Urgent Motion".

**(Krishna Rao, J.)**