

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No.138 of 2016

Date:6.06.2016

Between:

M/s. Microplex (India), Flat No.G-01, 6-3-1218/6/2,
Spring Heaven Apartment, Street No.6, Uma Nagar,
Begumpet, Hyderabad, rep.by Prop. Mr.Srikanth Rathi,
S/o Gopilalji Rathi, r/o Wardha, represented by its
Authorized signatory, Mr Mukund Maheshwari
s/o. Mr. G.K.Maheswari, R/o Flat No.401, Janapriya
Prameela Enclave, Umanagar, Begumpet, Hyderabad.

.....Appellant

And

A.P.State Agro Industries Deve. Corpn. Ltd.,
Block No.504, Hermitage Office Complex,
Hill Fort Road, Hyderabad, rep. by its VC and
Managing Director and another.

.....Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT APPEAL No.138 of 2016

PC: (*Per the Hon'ble Sri Justice P.Naveen Rao*)

Appellant is the 1st respondent in the writ petition and in this appeal, appellant challenges the order of the learned single Judge dated 27.10.2015, where under the orders of the A.P. State Micro and Small Enterprises Facilitation Council, Hyderabad, dated 25.08.2012, is set aside.

2. For convenience parties are referred to as arrayed in the writ petition.

3. Petitioner–corporation was appointed as a nodal agency by the State Government to cater to the needs of farmers in the composite State of Andhra Pradesh by providing fertilizers, micro nutrients and other agricultural inputs. On 8.11.2006 petitioner corporation entered into an agreement with the 1st respondent. In terms thereof the petitioner corporation was required to procure products on consignment basis from the 1st respondent for a period of one year and arrange for distribution of the same under State Government subsidy schemes through Agro Ryotu Seva Kendras. The agreement incorporates various aspects of contract. Clause-30 of the agreement provides that if there is any difference or dispute between the parties to the agreement, the same has to be resolved by way of arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (for short, the Act). While so, the 1st respondent filed claim before the A.P. Micro and Small Enterprises Facilitation Council, Hyderabad, established under the Micro, Small and Medium Enterprises Development Act, 2006 alleging that certain amounts due from the petitioner were not paid. The Council passed final orders dated 25.08.2012 directing the petitioner to pay the amount towards goods

supplied along with future interest. Learned single Judge held that the petitioner corporation is not a 'buyer' of the material in terms of the provisions of the Act, 2006 and, therefore, the Council has no jurisdiction to adjudicate the dispute and sets aside the order of the council dated 25.08.2012. Aggrieved thereby, the 1st respondent filed the instant writ appeal.

4. Though elaborate submissions are made, having regard to the fact that clause-30 of the agreement dated 08.11.2006 provides for settlement of disputes between the petitioner and the 1st respondent by way of arbitration, learned senior counsel for the first respondent and learned senior counsel for the petitioner have agreed for disposal of the writ appeal with liberty to the 1st respondent to invoke the arbitration clause under clause-30 of the agreement. However, learned senior counsel for 1st respondent submits that all the contentions urged in the instant writ appeal should be preserved and left open to the 1st respondent to raise all those contentions in the arbitral proceedings. He further submits that the 1st respondent has serious objection with regard to the appointment of the Managing Director as Arbitrator and prayed the Court to appoint a retired Judge of the High Court as Arbitrator. On instructions, learned senior counsel representing petitioner corporation submits that petitioner consented for appointment of retired High Court Judge as Arbitrator. Both learned senior counsels representing petitioner as well as 1st respondent have also submitted that the matter should be relegated to the stage when application was made by the 1st respondent before the Council, leaving it open to the parties to raise all the contentions as available in law.

5. With the consent of the learned senior counsel, the writ appeal is disposed of with the following order:

- i) The Hon'ble Justice Vilas V. Afzulpurkar, Judge (retired)

is appointed as Arbitrator.

ii) The Arbitral proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

iii) Learned Arbitrator shall fix his remuneration upon deliberation and consultation with the parties. The costs and expenses of the secretarial assistance of the arbitration proceedings shall also be determined by the learned Arbitrator. Each party will bear the expenses of the arbitration proceedings in all respects in equal share.

iv) The learned Arbitrator shall endeavor to complete the arbitration proceedings by making publication of Award within the time stipulated under the Arbitration and Conciliation Act, 1996.

v) The Arbitrator shall as far as possible hold arbitral proceedings at the arbitration centre in the High Court premises, 'C' Block.

vi) The parties are at liberty to raise all the pleas as available in law with reference to the dispute between the parties.

vii) In view of the disposal of the writ appeal in the above terms, the order passed by the learned single Judge as well as the order of the Council dated 25.08.2012 impugned in the writ petition renders ineffective and parties are relegated to the stage when the proceedings were initiated before the Council under the A.P. Micro and Small Enterprises Facilitation Council, Hyderabad, established under the Micro, Small and Medium Enterprises Development Act, 2006.

Miscellaneous petitions, if any, stand disposed of.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 06.06.2016
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**HON’BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON’BLE SRI JUSTICE P.NAVEEN RAO**

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