

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.2194 Of 2019**  
**(Through video conferencing mode)**

***Odisha Small Industries  
Corporation***

....

***Petitioner***

Mr. J.K. Mohapatra, Advocate

*-versus-*

***Micro Small and Medium  
Enterprises Industrial Facilitation  
Council and others***

....

***Opposite Parties***

Ms. S. Maharana, Advocate for O.P.2

**CORAM: JUSTICE ARINDAM SINHA**

**Order No.**

**ORDER**  
**10.01.2022**

- 07.** 1. Mr. Mohapatra, learned advocate appears on behalf of petitioner and submits, proceeding under challenge is the proceeding before opposite party no.1, Council. He submits, purported claims of opposite party no.2 arise in respect of agreement dated 16<sup>th</sup> December, 2013. He relies on two clauses in the agreement, clauses 5 and 14. The clauses are reproduced below:-

**“5. Corporation only Facilitator and not receiver:**

*The Corporation/OSIC shall be facilitator for quoting/tendering for supply of goods/services on behalf of the Unit “ and not being the actual user/beneficiary/receiver or purchaser of the goods/services, the Unit agrees that the placement of order on it by the Corporation/OSIC shall not make it a ‘buyer’ within the meaning of MSMED Act, 2006 and the Unit shall not claim any interest from the*

*Corporation/OSIC under the said Act or general law of the land in case of delay in payment.*

*The Corporation/OSIC, however, as facilitator agrees to provide all such necessary assistance/authorization/co-operation to the Unit/agency as may be legally permissible for claiming interest from actual buyer (Principal) under the above Act or under the general law of the land and the Unit/agency shall bear all such costs which the Corporation/OSIC may incur in providing such assistance or claiming the interest.*

14. Arbitration:

*If any dispute or difference arises between parties in respect of payment, quality, quantity, and condition of supply the same shall be referred by either party(ies) to the Managing Director of the Corporation/OSIC, who shall hear the matter and publish the award as per the provision of Arbitration and Conciliation Act-1996. The Decision of the MD, OSIC shall be final and binding for both parties. In case of Jurisdiction, the Court of Cuttack, in the State of Odisha has the jurisdiction.”*

2. He submits, it will appear in clause 5 of the agreement that his client is not buyer. Furthermore, there is arbitration agreement between the parties and further agreement that the Court of Cuttack, here in Odisha, has jurisdiction for purpose of disputes arisen under the agreement.

3. Ms. Maharana, learned advocate appears on behalf of opposite party no.2. She submits, supplies were made under the agreement. Out of substantial amount, approximately Rs.50,00,000/- (rupees fifty lakhs) is still to be paid by petitioner. Her client is supplier situate within territorial limits, over which opposite party no.1 exercises jurisdiction. Sub-section (4) in section 18, Micro, Small and Medium

Enterprises Development Act, 2006, allows her client to file before the Council in Mumbai, against a buyer anywhere in India. It has done so.

4. It appears, first contention of petitioner is that it is not a buyer. This can be urged before the Council. The second contention is arbitration agreement and exclusive jurisdiction of the Court of Cuttack in the State of Odisha. This contention must await adjudication on the first contention. In event the Council finds that petitioner is a buyer, provisions in the Act will override the arbitration agreement between the parties. Otherwise, the Council will leave parties to find their remedy under the agreement.

5. With above observations the writ petition is disposed of.

(Arindam Sinha)  
Judge

Prasant