

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.153 of 2022

**Odisha Small Industries
Corporation**

....

Appellant

Mr. Jatindra Kumar Mohapatra, Advocate

-versus-

***M/s Vardhman Wires & Cables
and Others***

....

Respondents

None

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

ORDER

21.04.2022

Order No.

- 01.**
- 1.** This matter is taken up through virtual/physical mode.
 - 2.** The present intra Court appeal has been preferred by the appellant against the order dated 10.01.2022 passed by the learned single judge of this Court in W.P.(C) No.2194 of 2019.
 - 3.** The brief facts of the case are that the appellant i.e. Odisha Small Industries Corporation (hereinafter, “appellant/corporation”) is a government company incorporated under the Companies Act, 1956. The appellant/Corporation floated a tender on behalf of Respondent No.3 i.e. SOUTHCO utility for procuring different electrical instruments in the year 2013.
 - 4.** The respondent No.2 i.e. M/s. Vardhman Wires and Cables through its proprietor Sri Rajkumar K. Sanklecha (hereinafter, respondent No.2/ supplier) located At-526, 5th Floor, Avior Building, Nirmal Galaxy, Mumbai was

declared the successful bidder and the work was entrusted to it vide agreement dated 16.12.2013 and purchase order dated 20.02.2014.

5. A dispute arose in the year 2018 and the respondent No.2/supplier filed a case before the Respondent No.1 i.e. Micro, Small and Medium Enterprises Industrial Facilitation Council, Mumbai (hereinafter, Respondent No.1/MSMEIFC) to claim certain disputed outstanding liability/amount due and payable by the Respondent No.3/SOUTHCO and the appellant/corporation.

6. The appellant/corporation challenged the jurisdiction and maintainability of the Respondent No.1/MSMEIFC to adjudicate the dispute in view of clauses 5 and 14 of agreement dated 16.12.2013 before this Court with a prayer to exclude itself as a buyer under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "MSME Act, 2006) as it is just a facilitator and subsequently, to refer the dispute to arbitration. The clauses of the agreement 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 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 parties 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.

7. The learned Single Judge vide order dated 10.01.2022 relied upon clause Nos. 5 and 14 of the agreement and observed that the first prayer of the appellant/corporation i.e. to exclude itself as a buyer under the MSME Act, being just a facilitator is to be argued before the Respondent No.1/MSMEIFC. The learned Single Judge further observed that if the Respondent No.1/MSMEIFC comes to the conclusion that the appellant/corporation is a buyer, the MSME Act will override the arbitration agreement between the parties and the MSME Act is to be employed to adjudicate any dispute arising between the parties or else the parties are at leave to avail their remedy under the arbitration agreement dated 16.12.2013. Consequently, the second prayer i.e. reference to arbitration should await the adjudication on the first.

8. Heard both the counsel for the parties at length. It is the case of the appellant that the MSME Act, 2006 has no application in view of Clause 5 of the Agreement and the appellant is to be treated only as a facilitator as no buyer-seller relationship exists and consequently the Respondent No.1/MSMEIFC has no jurisdiction to adjudicate upon the dispute. The appellant/ Corporation further argued that no reliance can be placed on Section 18(4) of the MSME Act, 2006 as the present case does not come under Section 15 & 17 of the MSME Act, 2006. However, during the course of hearing, the learned counsel for the appellant/corporation agreed that in view of conjoint reading of Clauses 5 & 14 of the agreement dated 16.12.2013, the Respondent No.1/MSMEIFC has the authority to rule on its own jurisdiction and consequently, sought withdrawal.

9. Faced with the aforesaid situation, we dispose of this appeal as withdrawn.

**(Jaswant Singh)
Judge**

**(M. S. Raman)
Judge**

Basudev

April 21st, 2022
Cuttack