

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBP No.48 of 2021

M/s. Surya Wires Pvt. Ltd., Petitioner
Chhattisgarh

Mr. V. Mahapatra, Advocate

-versus-

Odisha Rural Development and Opposite Party
Marketing Society, Bhubaneswar

Mr. S. S. Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE

ORDER
11.03.2022

Order No.

06. 1. Heard Mr. V. Mahapatra, learned counsel for the Petitioner and Mr. S. S. Mohanty, learned counsel for the Opposite Party.
2. The Petitioner has approached this Court in the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Act) seeking the appointment of an Arbitrator to adjudicate the disputes between the Petitioner and the Opposite Party arising out of a Memorandum of Understanding (MoU) dated 7th February, 2018.
3. Learned counsel for the Petitioner has drawn attention of the Court to two facts. One is the Clause 8 of the MoU, which according to the Petitioner is an Arbitration Clause. The second is the notice dated 9th July, 2021 sent by the Petitioner to the Opposite Party seeking the appointment of an Arbitrator raising a claim regarding illegal encashment of a Bank Guarantee in the sum of Rs.72,70,017/- and illegal and unlawful termination of the MoU. The

Petitioner is also questioning the demand raised by the Opposite Party on the Petitioner for refund of Rs.2,58,09,193.05.

4. Learned counsel for the Opposite Party, on the other hand, refers to the counter affidavit, where it is contended that the Act does not apply at all. It is further denied that the Petitioner has any valid claim against the Opposite Party. According to Opposite Party, the only remedy available to the Petitioner is to go in for recovery of the amount due as arrears of land revenue and not otherwise.

5. The relevant clause of the MoU, which is relied upon by the Petitioner, is Clause 8, which reads as under:

“8. Arbitration and Applicable Laws-

8.1 The parties hereby agree that any dispute arising in connection with this MoU shall first be addressed mutually by the Parties. If the said Parties are unable to resolve the dispute mutually, the dispute shall be referred to the Secretary, Panchayati Raj and Drinking Water Department, and Government of Odisha whose decision shall be final and binding on all parties.

8.2. In case an aggrieved party seeks judicial remedy the petition shall be filed in the jurisdiction of Orissa High Court.”

6. The above clause envisages the parties to first seek to address the dispute mutually and failing that, to refer the dispute to the Secretary, Panchayati Raj and Drinking Water Department, Government of Odisha. Those stages have obviously been crossed since parties have been unable to resolve their disputes inter se. Clause 8.2 clearly states that if an aggrieved party “seeks judicial remedy” then such petition will be filed within the jurisdiction of this Court. The expression “judicial remedy” would include the

remedy of filing an application under Section 11(6) of the Act for the appointment of an Arbitrator.

7. In the present case, the fact is that the relevant Clause is titled “Arbitration and Applicable laws”. This clearly reflects the intention of the parties that the dispute should be resolved through arbitration. Consequently, the Court rejects the plea of the Opposite Party that the Act does not apply at all.

8. As regards the tenability of the Petitioner’s claim, this is a matter to be decided in arbitration and not by this Court in the present proceedings. Incidentally, learned counsel for the Opposite Party submitted that the Opposite Party has claims against the Petitioner as well.

9. Consequently, this Court, while leaving the contentions of both parties on merits open to be urged before the learned Arbitrator in accordance with law, appoints **Mr. Justice Pramath Patnaik**, former judge of this Court as the sole Arbitrator to adjudicate the disputes between the parties including the claims and counter claims. The arbitration shall take place under the aegis of the High Court of Orissa Arbitration Centre.

10. The arbitration petition is disposed of accordingly. A copy of this order be communicated to the Coordinator, Orissa Arbitration Centre and the learned Arbitrator forthwith.

(Dr. S. Muralidhar)
Chief Justice

M. Panda