

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.39604 Of 2021
(Through hybrid mode)**

***Indian Oil Corp. Ltd.,
Jagatsinghpur***

.... Petitioner

Mr. D. Mohanty, Advocate

-versus-

***Director of Industries-cum-
Chairman, MSEFC, Cuttack and
others***

.... Opposite Parties

Mr. G. Kar, Advocate

CORAM: JUSTICE ARINDAM SINHA

**Order
No.**

**ORDER
10.03.2022**

- 03.**
- 1.** Mr. Mohanty, learned advocate appears on behalf of petitioner and draws attention to order dated 22nd December, 2021. He submits, his client duly put in requisites and notice was served on opposite party no.2 as evidenced by track record in the file, confirming delivery as on 23rd February, 2022.
 - 2.** Mr. Kar, learned advocate appears on behalf of opposite party no.3 bank, who issued the bank guarantees.
 - 3.** Text in order dated 22nd December, 2021 is reproduced below.

“1. Mr. Mohanty, learned advocate appears on behalf of petitioner. He submits, works contract was given to opposite party no.2. Performance and other guarantees were obtained from the contractor. The

contractor since been terminated. His client requires invocation of the bank guarantees on their terms. However, opposite party no.2 obtained impugned order dated 24th September, 2021 from opposite party no.1 order, inter alia, that his client be restrained from invoke the bank guarantee. On query from Court he submits, the bank guarantee is followed till 6th November, 2022.

2. Micro, Small and Medium Enterprises Development Act, 2006 provides for a procedure for recovery on supplies. It is obvious that opposite party no.2 has approached the authority has a supplier. The authority will act within the provisions to conciliate and thereupon, if necessary, adjudicate on the claim. Whether it can restrain invocation of bank guarantee which is separate contract between petitioner and the banker is a question that arises in the challenge held on by the petitioner against said order of the authority.

3. Issue notice enclosing copy of this order upon opposite party nos. 2 and 3. Petitioner will put in requisites.

4. List under heading 'For Orders' at the top on 6th January, 2022."

4. Court adversely presumes against opposite party no.2 as having no answer to the query posed, regarding Micro, Small and

Medium Enterprises Development Act, 2006 not empowering the authority to pass order on separate contract of guarantee between one of the parties to the reference and the bank (opposite party no.3).

5. Impugned order dated 24th September, 2021 is set aside and quashed.

6. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

