IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1444 of 2025

Odisha Mining Corporation Limited, …. **Appellant**
Bhubaneswar

Ms. Pami Rath, Sr. Advocate
along with Mr. I.A. Acharya, Advocate

-Versus-

Union of India and others …. **Respondents**

CORAM:

JUSTICE KRISHNA SHRIPAD DIXIT
JUSTICE CHITTARANJAN DASH

ORDER
09.04.2026

Order No.
02.

Appellant a Company incorporated under the provisions of the erstwhile Companies Act, 1956, is preferring this Intra-Court appeal for laying a challenge to a learned Single Judge's order dated 18.06.2025, whereby its W.P.(C) No.22236 of 2014, which called in question the Micro and Small Enterprises Facilitation Council (MSEFC) award dated 23.02.2015 has been negatived.

2. Learned Senior Counsel-Ms. Rath appearing for the Appellant vehemently argues very many points seeking invalidation of impugned order and also the award in question drawing attention of the Court *inter alia* to the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and also the new regime brought about by the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 that came into force w.e.f. 02.10.2006.

3. Having heard learned Senior Counsel for Appellant and having perused the appeal papers, we decline indulgence in the matter, inasmuch as the Appellant has got an alternate & equally efficacious remedy under Section 34 of the Arbitration and Conciliation Act, 1996, which is internalized by both the 1993 Act & 2006 Act. In fact, learned Single Judge while negativing the challenge to the award at para- 20 also has discussed this aspect of the matter.

4. For ease of reference, para-20 of the impugned order is reproduced below:

> *"20. An argument was advanced by Ms. Rath, teamed Senior Advocate that no opportunity was given to the Petitioner to file written statement to the claim of Opposite Party No.3 in the arbitration proceeding. It was her submission that arbitration was to be undertaken in accordance with the provisions of the Arbitration Act, 1996. The mandatory provision having not been followed by the Council while taking up the arbitration proceeding, the same vitiates the entire arbitration proceeding, so also the award. Such an argument advanced by Ms. Rath, learned Senior Advocate is not acceptable, inasmuch as the legality and propriety of the procedure followed and merit of the award can only be adjudicated in a properly constituted proceeding under Section 34 of the Arbitration Act, 1996 read with Section 19 of the MSMED Act, 2006. Admittedly, the Petitioner has not resorted to the statutory provision, as yet. Without referring to the case laws in the field it can be safely said that such an argument cannot be entertained in a proceeding under Articles 226 and 227 of the Constitution of India. This Court is not vested with the power under Articles 226 and 227 of the Constitution to adjudicate upon the legality and validity of the award passed by the Council. The argument of Ms. Rath, learned Senior Advocate on this legal aspect is also not sustainable."*

5. The vehement submission of learned Senior Counsel that relegating her client to the statutory remedy under Section 34 of

the 1996 Act would not do justice to it, inasmuch as the findings have been recorded on merits of the matter need not be much adverted to, inasmuch as when a writ petition is negative on the ground of availability of alternate remedy, whatever observations that are made in the order negativing the petition cannot be construed as the findings that would bind Section 34 Court. Therefore, that apprehension may not be correct.

6. All the above being said, one clarification needs to be made by us to the effect that whatever period spent in prosecuting the writ petition and the writ appeal is liable to be discounted in terms of Section 14 of the Limitation Act, 1963, while computing the period of limitation prescribed for laying a challenge to award of the kind under Section 34 of 1996 Act.

In the above circumstances, this Appeal fails, making it clear that the observations of the learned Single Judge on merits being confined to the disposal of writ petition shall not influence the trial and disposal of intended proceedings under Section 34 of 1996 Act.

Web copy of order to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge

Anisha

Signature Not Verified
Digitally Signed
Signed by: ANISHA NANDA
Designation: Jr. Stenographer
Reason: Authentication
Location: OHC, Cuttack
Date: 10-Apr-2026 13:00:07