



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.22236 OF 2014

(An application under Articles 226 and 227 of the Constitution of India)

M/s Odisha Mining Corporation Limited,
Government of Odisha Undertaking,
registered/ Head Office AT OMC House,
Bhubaneswar, represented through its
Managing Director, OMC Limited Petitioner

-Versus-

- 1. Union of India, Ministry of Micro,
Small and Medium Enterprises,
Shastri Bhawan, New Delhi, represented
through its Secretary***
- 2. Member Secretary,
Micro and Small Enterprises Facilitation
Council and Director of Industries,
Konkan Region, Office Complex Building,
Opposite Mulund Check Naka,
Wagle Estate Corner, Thane-400604***
- 3. M/s Indiana Engineering Works
(Bombay Private Limited, Indiana House,
Makwana Road, Marol Naka, P.B. No.7409,
Andheri (East), Mumbai-400059***
..... Opp. Parties

Advocates appeared:

For Petitioner : Ms. Pami Rath, Senior Advocate
being assisted by Ipsit Acharya, Advocate

For Opp. Parties : Mr. Durga Prasad Nanda, Senior Advocate
being assisted by Suvalaxmi Devi, Advocate
(For Opposite Party No.3)

CORAM:

JUSTICE K.R. MOHAPATRA

Date of Hearing 04.04.2025 :: Date of Judgment 18.06.2025



JUDGMENT

K.R.Mohapatra, J;

1. This matter is taken up through hybrid mode.
2. Petitioner-M/s Odisha Mining Corporation Limited (for brevity 'OMC') has filed this Writ Petition seeking for a direction to quash and set aside the proceeding in IFC Case No.1 of 2006 initiated by the Industries Facilitation Council, Thane (for brevity 'IFC') and consequential letter dated 30th January, 2014 (Annexure-7) issued by Micro, Small and Medium Enterprises Facilitation Council, Konkon Region, Thane (for brevity 'Council') communicating the order of the even date terminating the conciliation proceeding and initiating arbitration proceeding under Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity, 'MSMED Act, 2006') and letter dated 23rd July, 2014 (Annexure-9) communicating that the IFC, Thane had jurisdiction to entertain the proceeding in question. Petitioner, by way of amendment to the Writ Petition also assailed the *ex-parte* award dated 15th November, 2014 (Annexure-10) passed by the IFC/Council, Thane.
3. Ms. Rath, learned Senior Advocate appearing for OMC submitted that technical and commercial bids for design, manufacture, supply, storage, erection, testing, commissioning and performance guarantee test on turn-key basis of one 75 TPH crushing and screening plant at Jajanga, Odisha was invited by the Petitioner-OMC. The Opposite Party No.3- M/s



Indiana Engineering Works (Bombay) Private Limited was the successful bidder. Petitioner issue LoI to Opposite Party No.3 on 22nd December, 1992, whereas the work order was issued by OMC on 29th September, 1993. Accordingly, contract was executed between OMC and Opposite Party No.3 on 13th May, 1994 (Annexure-2). The Opposite Party No.3 failed to achieve the rated capacity in performance test, i.e., 75 TPH (Ton Per Hour) and left the work incomplete. In spite of repeated communications, the Opposite Party No.3 did not comply with the terms and conditions of the contract. On the other hand, Opposite Party No.3 claiming to be a Supplier, filed an application on 27th March, 2006 before the IFC, Thane under Section 4 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for brevity 'IDP Act, 1993'). The said application was registered as IFC Case No.1 of 2006 (Annexure-1). It was alleged in the said application that the OMC failed to clear the bills of the Opposite Party No.3 from 6th May, 1998 to 17th April, 1999 though the plant in question was handed over to OMC on 11th April, 1999 and it was provisionally accepted on the said date. Thus, IFC Case No.1 of 2006 was registered before IFC.

4. The plant in question was proposed to be constructed at Jajanga, Odisha, but the petition under the IDP Act, 1993 (as amended in 1998) was filed at Thane in the State of Maharashtra. The entire cause of action, if any, i.e., issuance of tender, work order, execution of contract and submission of bills etc., arose within the geographical territory of the State of Odisha. The contract



between OMC and Opposite Party No.3 under Annexure-2 clearly stipulated that the contract shall be subject to the exclusive jurisdiction of the Court at Bhubaneswar in Odisha. Thus, the IFC had no jurisdiction to entertain such an application under the IDP Act, 1993. Before issuance of notice to the Petitioner, the IFC should have examined as to whether it had jurisdiction to entertain an application under the IDP Act, 1993 or not. When the matter stood thus, MSMED Act, 2006 came into force with effect from 2nd October, 2006, but the IFC assuming jurisdiction under the MSMED Act, 2006 acted in terms of Section 18 of the MSMED Act, 2006 and proceeded with the matter. The provision under Section 18 of the MSMED Act, 2006 does not have any retrospective application to validate a proceeding under the IDP Act, 1993. When initiation of the proceeding under the IDP Act, 1993 by the IFC, Thane was without jurisdiction and a nullity, no action under the MSMED Act, 2006 could have been taken by the said IFC validating an invalid proceeding. Thus, IFC, Thane lacked territorial jurisdiction to entertain IFC Case No.1 of 2006.

- 4.1 In support of her submission, Ms. Rath, learned Senior Advocate relied upon the case of ***Harshad Chiman Lal Modi Vs. DLF Universal Limited***; (2005) 7 SCC 791 and ***Sneh Lata Goel Vs. Pushpalata***; (2019) 3 SCC 594.
5. Section 32 of the MSMED Act, 2006 deals with repeal and saving of IDP Act, 1993 (as amended in 1998). Sub-section (1) of Section 32 of MSMED Act, 2006 makes it clear that by enactment of the said Act, IDP Act, 1993 was repealed. It is,



however, clarified in Sub-section (2) that notwithstanding the said repeal clause, anything done or any action taken under the IDP Act, 1993 so repealed, be deemed to have been done or taken under the corresponding provision of MSMED Act, 2006. Purportedly assuming jurisdiction under the said provision, the IFC proceeded with IFC Case No.1 of 2006. But when the initiation of the proceeding was itself defective and without jurisdiction, the IFC could not have assumed jurisdiction and undertaken exercise under the MSMED Act, 2006. Section 18 (4) of the MSMED Act, 2006 confer territorial jurisdiction of IFC, Thane to entertain application for which the cause of action arose beyond its territorial jurisdiction. But there was no such corresponding provision under the IDP Act, 1993 (as amended in 1998). Thus, the said provision makes it clear that it has a prospective effect. As such, neither Section 32 nor Section 18 (4) of the MSMED Act, 2006 confers any jurisdiction on IFC, Thane to entertain the application in question.

- 5.1** Further, upon receipt of the application filed by Opposite Party No.3, IFC Case No.1 of 2006 was registered and notice was issued to the Petitioner-OMC. On 13th December, 2006, Petitioner on being served with the notice moved the IFC, Thane-Opposite Party No.2 and prayed for two months' time to file reply. But no order was passed by the IFC, Thane on the said application filed by the Petitioner-OMC. As during the relevant period, IFC, Thane was not functioning; Petitioner could not also enquire about the status of its application and further proceeding in the matter. However, the Petitioner was



served with 2nd notice on 23rd May, 2013 by the Council, which was in continuation of the notice issued by IFC, Thane for filing reply. Pursuant to the 2nd notice dated 23rd May, 2013, Petitioner filed an application raising preliminary issue of jurisdiction of IFC, Thane/ Council to accept and decide IFC Case No.1 of 2006. However, vide letter dated 27th January, 2014 (Annexure-6), the Council intimated the Petitioner and Opposite Party No.3 the minutes/order passed pursuant to the hearing held on 18th January, 2014 in IFC Case No.1 of 2006, wherein, it was stated as under:-

“Council come to the conclusion that Respondent is not interested in conciliation. Therefore, the Council decided to terminate the conciliation process and to start the arbitration process. It is also decided to inform the Respondent that if remains absent for next hearing, the case will be decided on merit. Next hearing will be held on 1st February, 2014.”

Again vide letter dated 30th January, 2014, the Council communicated to the Petitioner and Opposite Party No.3 the minutes/order passed pursuant to hearing held on 18th January, 2014, wherein, it was stated as under:-

“As per the decision taken in the MSEFC Hearing Dtd. 18.01.2014, Arbitration Order pertaining to your Petition is enclosed herewith for your information.”

- 5.2** Ms. Rath, learned Senior Advocate further submitted that upon receipt of the notice dated 23rd May, 2013 from the Council, the Petitioner had filed an application dated 13th August, 2013 requesting the Council to decide the issue of jurisdiction as



preliminary issue. But without taking a decision on the same, the Council communicated its decision to terminate the conciliation proceeding holding that the Petitioner was not interested to settle the matter amicably. Further, the Council took a decision to take up the arbitration proceeding under Section 18 (3) of the MSMED Act, 2006 by itself. Letter dated 31st January, 2024 (Annexure-7) contained the order passed pursuant to the hearing held on 18th January, 2014. On the said date, a composite order was passed, *firstly*, finally terminating the conciliation proceeding and *secondly*, initiating arbitration proceeding under Section 18(3) of the MSMED Act, 2006 by the Council itself. Thus, the same resulted in procedural irregularity as well as impropriety.

- 5.3 In the letter dated 23rd July, 2014 (Annexure-9), reference to hearing on 1st February, 2014 was made. In the said letter, it was stated that in view of provision under Section 32 of the MSMED Act, 2006, the Council had jurisdiction to entertain the case as the Unit (Opposite Party No.3) was registered as SSI with Directorate of Industries, Government of Maharashtra. However, the said letter under Annexure-9 did not indicate as to whether any hearing on preliminary issue of jurisdiction was undertaken on that day or not. The present Writ Petition was filed assailing the letter dated 23rd July, 2014 (Annexure-9). During pendency of the Writ Petition, the *ex-parte* award was passed on 23rd February, 2015 (Annexure-10) in IFC Case No.1 of 2006 by the Council. Hence, the Petitioner amended the Writ Petition also to challenge the said order/award.



- 5.4 It is further submitted that order dated 7th February, 2014 (Annexure-8) stipulates that the Council gave direction to the parties to resolve the issue amicably. The same implies that by that date, the proceeding was at the stage of conciliation and no arbitration proceeding had been initiated. Even after filing of the present Writ Petition on 14th November, 2014, the Petitioner intimated the Council about filing the Writ Petition via e-mail dated 14th November, 2014 (same date) (Annexure-12). However, the impugned award was passed on 23rd February, 2015 under Annexure-10.
- 5.5 It is stated that the impugned award dated 23rd February, 2015 was passed on the basis of purported hearing on 15th November, 2014. The impugned award was passed without resorting to the procedure of arbitration. When the Council took up arbitration, it was incumbent on its part to allow the Petitioner to file its written statement of defence under Section 23 of the Arbitration and conciliation Act, 1996 (for brevity 'Arbitration Act'). No notice whatsoever was issued to the Petitioner intimating either initiation of the proceeding under the Arbitration Act, 1996 or providing opportunity to file statement of defence. It was stated in the impugned award under Annexure-10 that the Petitioner was represented by Sri Saswat Mishra and Sri N.C. Sahu in the hearing on 15th November, 2014, which was not at all correct, as by that time Sri Mishra was no longer associated with the Petitioner-OMC. An affidavit was also filed through Mr. N. C. Sahu stating that neither he nor Sri Mishra appeared before the Council at Thane in the proceeding dated 15th November, 2014.



Procedure laid down in the Arbitration Act, 1996 was given a total go by the Council. Hence, the impugned award is a nullity. Ms. Rath, learned Senior Advocate in support of her submission also relied upon the case law ***JSW Steel Limited Vs. M/s Micro, Small Enterprises Facilitation Council, Cuttack***; (2023) 3 ILR Cuttack 643 and ***Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and others***; (2021) 19 SCC 206. Date of communication of the award was 4th March, 2015, i.e., after four months from the purported date of award dated 15th November, 2014.

6. Ms. Rath, learned Senior Advocate arguing on the maintainability of the Writ Petition, submitted that this Court has the jurisdiction to entertain the present Writ Petition, as the initial cause of action for filing the Writ Petition arose in the State of Odisha. She relied upon the case of ***Shanti Debi Vs. Union of India***; (2020) 10 SCC 766, ***Nawal Kishore Sharma Vs. Union of India and others***; AIR 2014 SC 3607 and ***M/s. Kusum Ingots and Alloys Ltd. vs Union of India and another***; AIR 2004 SC 2321. Alternate remedy though available to the Petitioner is not a bar to entertain the Writ Petition as the *ex-parte* award passed by the Council was *ex-facie* illegal and without jurisdiction is settled in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others***; AIR 1999 SC 22. Section 19 of the MSMED Act, 2006 does not oust the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India since it relates to judicial review. She, therefore, prays for setting aside the letters under



Annexures-7, 9 and 10 and also prayed for a direction to hold the very initiation of the proceeding before the IFC, Thane under the provisions of the IDP Act, 1993 to be without jurisdiction and prayed for declaring the entire proceeding to be a nullity. She also prayed for declaring the consequential award under Annexure-10 to be a nullity.

7. Mr. Nanda, learned Senior Advocate appearing for Opposite Party No.3 submitted that on being adjudged successful in the bid, a contract was executed between the Petitioner and Opposite Party No.3 on 13th May, 2013 for the designing, supply installation and commissioning of one 75 TPH crushing and screening plant in BPJ Mines under Barbil Zone, Keonjhar, Odisha. Due to certain breaches (as alleged) in the claim application dated 27th March, 2006 (Annexure-1) in IFC Case No.1 of 2006, the Opposite Party No.3 was prevented from completing the work within the stipulated period as envisaged in the contract. Certain dues of Opposite Party No.3 remained unpaid. Hence, Opposite party No.3 filed IFC Case No.1 of 2006 before IFC, Thane under the provisions of the IDP Act, 1993 (as amended in 1998) claiming an amount of Rs.5,37,01,293/-. Upon enactment of the MSMED Act, 2006, the IFC was replaced by MSME Council, Thane (MSEFC- Opposite Party No.2). In view of Section 32 of the MSMED Act, 2006, the Council took up the proceeding; proceeded with the case and passed the award under Annexure-10 directing the Petitioner to pay Opposite Party No.3 a sum of Rs.45,60,886/-



along with interest. Just a day before passing of the award under Annexure-10, the Petitioner filed the present Writ Petition.

7.1 After the award under Annexure-10 was passed, the Petitioner sought for amendment of the Writ Petition to challenge the award, which was allowed by this Court. Vide order dated 12th May, 2015 and in Misc. Case No.5231 of 2015, directed interim stay operation of award under Annexure-10, which is continuing till date. Although an application for vacation of the interim order has been filed by Opposite Party No.3, but the same is still pending. Due to non-payment of the amount so awarded by the Council in the impugned award, the Opposite Party No.3, which is a Small Scale Industrial Unit, is suffering financially. Upon receipt of the application filed by Opposite Party No.3 under Annexure-1, IFC, Thane issued notice to the Petitioner on 9th November, 2006 to file their reply. The Petitioner in its letter dated 13th December, 2006 (Annexure-R/24 to the additional affidavit) sought for extension of two months for filing their reply to IFC Case No.1 of 2006. On 24th July, 2007 (Annexure-R/25 to the additional affidavit), the Petitioner wrote to the Principal Secretary, IFC, Thane that they had engaged Sri Ashok Kumar Pati to defend their case before the IFC. When the matter stood thus, due to enactment of MSMED Act, 2006, the Council, vide its letter dated 4th March, 2013 (Annexure-R/28 to the additional affidavit) directed the Petitioner to file its reply within fifteen days from the receipt of the said letter with a copy to the Opposite Party No.3 failing which, the Council would take an *ex-parte* decision. Again, on



23rd May, 2013 (Annexure-4 to the writ petition and Annexure-R/29 to the additional affidavit), the Council referring to its earlier letters informed the Petitioner that no reply by the Petitioner was filed by then and it was also indicated therein that in the event no submission/say is received within seven days from the date of communication, the Council would decide the case *ex-parte* and the same would amount to waiver of opportunity of hearing at Petitioner's own risk. In reply to the said letter under Annexure-R/29, the Petitioner intimated Opposite Party No.2 vide its letter dated 29th May, 2013 (Annexure-R/30 to the additional affidavit) that pursuant to notice dated 9th November, 2006 by the Council when its Advocate went to the office of Opposite Party No.2/Council to verify the case record and to obtain necessary documents in January, 2007, the Council was found defunct in view of the enactment of MSMED Act, 2006. It was also alleged, *inter alia*, that no communication was made by the Council thereafter. Further, the Petitioner alleged that the Council had no jurisdiction to entertain the dispute on account of Clause-9.20 of the contract and the case was barred by limitation. However, the Petitioner requested for another set of claim petition and sought for two months' time for submission of reply. Accordingly, the Council-Opposite Party No.2 sent a set of documents in respect of the claim petition to the Petitioner on 13th June, 2013 (Annexure-R/31 of the additional affidavit) directing them to file their reply within fifteen days of receipt of the documents. In reply, the Petitioner informed the Council in its letter dated



3rd July, 2013 (Annexure-R/32 to the additional affidavit) that they had received documents on 17th June, 2013 only and would require one month time with effect from 1st July, 2013 to file their reply. However, the Council/Opposite Party No.2 issued notice for final hearing of the parties on 18th July, 2013 (Annexure-R/33 to the additional affidavit) informing them that despite having served with notice to the Petitioner to file reply nothing had been received. Thus, as last opportunity the Petitioner was directed to make the payment as claimed or to file its reply within fifteen days from the date of receipt of the said notice failing which, the Council would be compelled to hear the matter without waiting for reply of the Petitioner. On 8th August, 2013, the Petitioner filed its preliminary reply (Annexure-5). On receipt of the aforesaid reply, the Council sent a copy of the same to the Opposite Party No.3 to respond to the same within fifteen days. In due course on 29th August, 2013 (Annexure-R/34 to the additional affidavit), the Council directed both the parties to attend the hearing scheduled on 6th September, 2013. The matter was then adjourned on 6th September, 2013. Thus, hearing of the case was scheduled to 11th October, 2013 and the parties were directed by the Council to attend hearing on the scheduled date vide Annexure-R/37 to the additional affidavit. On the said date, the Opposite Party No.3 filed its rejoinder to the Petitioner's reply. Accordingly, the date of hearing was fixed to 15th November, 2013 (Annexure-R/39 to the additional affidavit). Notice was also sent enclosing minutes of the hearing held on 11th October,



2013, which disclosed that the Petitioner did not attend hearing. On receipt of the said letter /notice, the Petitioner requested for adjournment of four weeks to file the reply to the affidavit filed by Opposite Party No.3. Further, the Petitioner vide its letter dated 21st December, 2013 and 26th December, 2013 raised the objection of jurisdiction. It also admitted to have withheld a sum of Rs.25,13,775/- from the Opposite Party No.3 on account of their failure to achieve the rated capacity. The Petitioner also raised objection that the money claim made by Opposite Party No.3 related to financial year 1999-2000 and the application under the IDP Act, 1993 was filed in the year 2006, i.e., after six years despite having other fora for redressal of its grievances. It was further stated that MSMED Act, 2006 has come into force on 2nd October, 2006, which is prospective in nature. Thus, it could not be made applicable to the claim of Opposite Party No.3 retrospectively more particularly after a lapse of six years. Thereafter, the hearing before the Council was scheduled to 18th January, 2014, which was communicated to the parties vide notice of the Council dated 7th January, 2014. In the said notice, minutes of the hearing held on 21st December, 2013, was also enclosed which revealed that the Petitioner did not attend the hearing. Subsequently, the date of hearing was scheduled to 1st February, 2014 and it was communicated by the Council to the parties vide notice dated 24th January, 2014. In the said notice, minutes of the hearing held on 18th January, 2014 was enclosed which disclosed that the Petitioner did not attend the hearing. Thus, the Council



opined that the Petitioner is not interested for conciliation. As such, it decided to terminate the conciliation and commence the arbitration process. Thus, its Mr. Nanda, learned Senior Advocate argued that the Petitioner having afforded ample opportunity to participate in the conciliation, chose not to avail the same. As such, no irregularity or illegality was committed by the Council in terminating the conciliation proceeding and commencing the arbitration process. Even thereafter, the Council provided opportunities to the parties to settle the matter amicably without involving the Council, which is clear from the subsequent minutes of the Council dated 1st February, 2014. However, vide its letter dated 5th May, 2014 (Annexure-R/45 to the additional affidavit), the Petitioner being not satisfied again wrote to the Council/Opposite Party No.2 that it lacked jurisdiction to decide the dispute and requested to decide the issue of jurisdiction preliminarily. Hearing of matter was then posted to 21st June, 2014 by the Council. Vide the said notice under Annexure-R/46 to the additional affidavit, the Petitioner informed the Council/Opposite party No.2 to decide the issue of jurisdiction first without which attendance of the Petitioner should not be insisted upon. In response to the said letter, the Council intimated the Petitioner vide Annexure-7 that it had jurisdiction to entertain the claim of Opposite Party No.3 in view of Section 32 of the MSMED Act, 2006 read with notification dated 7th January, 2008 issued by the Industry, Energy and Labour Department, Government of Maharashtra. Thereafter, the Council proceeded with the arbitration issuing



notice to the parties to attend the hearing for arbitration to be held on 30th August, 2014 (Annexure-R/48 to the additional affidavit). In response to the same, the Petitioner vide its letter dated 27th August, 2014 (Annexure-R/49 to the additional affidavit), requested the Council to adjourn the hearing for four weeks on account of change in the office order of Chairman/Managing Director. Hence, the matter was then fixed to 15th November, 2014 under intimation to the parties. When the matter stood thus, the Petitioner filed the instant Writ Petition on 14th November, 2014. On the same date, it intimated to the Council about filing of the Writ Petition. The matter was, however, taken up on 15th November, 2014 and on conclusion of hearing in absence of the Petitioner award under Annexure-10 was passed directing the Petitioner to pay Rs.45,60,886/- along with interest till the date of payment to Opposite Party No.3 within a period of one month from the date of receipt of the award. Thus, the Petitioner moved this Court for amendment of the Writ Petition to challenge the award, which was allowed. Mr. Nanda, learned Senior Advocate, therefore, submitted that since award under Annexre-10 has already been passed in the IFC Case, the Writ Petition in the present form is not maintainable. Legality of the decision with regard to issue of jurisdiction as well as merit of the award (Annexure-10) can only be challenged under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act, 2006. The Petitioner was afforded with ample opportunity by the Council as would be apparent from the documents along with



additional affidavit filed by Opposite Party No.3. The grievance, if any, with regard to termination of the conciliation proceeding can only be challenged in a properly constituted petition under Section 34 of the Arbitration Act, 1996 and not in the present Writ Petition.

- 7.2 It is further submitted that the Council at Thane had jurisdiction to entertain the claim of the Opposite Party No.3, as the Opposite Party No.3 was registered with the Directorate of Industries, Maharashtra, which come under the jurisdiction of the Council at Thane. Mr. Nanda, learned Senior Advocate also relied upon the case of **Kanwar Singh Saini Vs. High Court of Delhi**; (2012) 4 SCC 307, wherein, at para-23, Hon'ble Supreme Court held as under:-

“When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner”. Thus, for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.”

The Opposite Party No.3 being an SSI Unit under the jurisdiction of Council at Thane had jurisdiction to entertain the dispute relating to IDP Act, 1993. Again, after commencement of MSMED Act, 2006, the act done or orders passed under the IDP Act, 1993 was saved and taken to have been passed under the provisions of MSMED Act, 2006. The Council has also intimated the Petitioner under Annexure-7 that it had jurisdiction to entertain the dispute/claim made by the Opposite Party No.3.



Mr. Nanda, learned Senior Advocate also placed reliance on the case of *Marsons Electrical Industries Vs. Chairman, Madhya Pradesh Electricity Board and another*; 2023 SCC OnLine All 2675. Mr. Nanda, learned Senior Advocate further submitted that in view of the ratio in the case of *M/s Silpi Industries etc. Vs. Kerala State Road Transport Corporation and another*; (2021) 18 SCC 790, the MSMED Act, 2006 being a special statute will have overriding effect on the Arbitration Act, 1996 and in the instant case, Opposite Party No.3 under the IDP Act, 1993 had approached the competent authority and filed its claim under the said Act. “Any agreement to the contrary has to be ignored in view of the statutory obligations.” The same view was taken by the Allahabad High Court taking into consideration the case law in the case of *Marsons Electrical Industries (supra)*, Kerla High Court in *Shreyas Marketing vs Micro and Small Enterprises Facilitation Council (MSEFC), Bangalore and another*; (2023) SCC OnLine (Ker) 4206 has discussed the jurisdiction of the Council established under Section 20 of the MSMED Act, 2006 and its overriding effect in view of Sections 18 and 24 of the MSMED Act, 2006. It is held therein that the jurisdiction of a Council is determined by the location of the Supplier’s business. Section 18 (4) of the MSMED Act, 2006 categorically states that only the Facilitation Council in the area where the Supplier’s business is located has jurisdiction to entertain the claim.

7.3 In *Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit-2) and other*; (2023) 6



SCC 401, Hon'ble Supreme Court dealt with several issues regarding applicability of the MSMED Act, 2006. In para-44 and 45 of the said case, Hon'ble Supreme Court held as under:-

“44. The submissions made on behalf of the counsel for the Buyers that a conscious omission of the word “agreement” in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-section (1) and sub-section (4) of Section 18 (2005) 1 SCC 754. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

45. There cannot be any disagreement to the proposition of law laid down in various decisions of this Court, relied upon by the learned counsel for the buyers that the Court has to read the agreement as it is and cannot rewrite or create a new one, and that the parties to an arbitration agreement have an autonomy to decide not only on the procedural law to be followed but also on the substantive law, however, it is equally settled legal position that no agreement entered into between the parties could be given primacy over the statutory



provisions. When the Special Act i.e., MSMED Act, 2006 has been created for ensuring timely and smooth payment to the suppliers who are the micro and small enterprises, and to provide a legal framework for resolving the dispute with regard to the recovery of dues between the parties under the Act, also providing an overriding effect to the said law over any other law for the time being in force, any interpretation in derogation thereof would frustrate the very object of the Act.”

Hon’ble Supreme Court in the aforesaid case law also clarified the powers of the Facilitation Council so that it acts as an Arbitrator vis-à-vis the Arbitration Act, 1996. The relevant para-48 is reproduced hereunder for ready reference.

“48. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub- section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.”

In view of the above, Mr. Nanda, learned Senior Advocate argued that the Council under the IDP Act, 1993 initially and Facilitation Council under the MSMED Act, 2006 after its enactment had the jurisdiction to entertain the claim/dispute of the Opposite party No.3.

7.4. It was further argued by Mr. Nanda, learned Senior Advocate that the claim of Opposite Party No.3 was not time barred as alleged by the Petitioner. Elaborating his submission Mr. Nanda, learned Senior Advocate stated that the Petitioner



refused to make payment of certain invoices raised by Opposite Party No.3 from 13th February, 1997 till 29th February, 2000. Several requests and reminders of the Opposite Party No.3 to the Petitioner went in vain. All the time, the Petitioner although proposed to settle the dispute amicably, but in essence, it only killed time and no fruitful step was taken at the instance of the Petitioner in that regard. Till 6th October, 2004 (Annexure-R/6 to the Additional Affidavit), the Petitioner proposed settlement with Opposite Party No.3. On 18th November, 2004 (Annexure-R/17 to the Additional Affidavit), the Petitioner forwarded the copy of the minutes of the meeting on 14th October, 2004, which indicated that the Petitioner would float fresh tender to bring in the third party to repair the crusher and price quoted in the tender would be deducted from the outstanding dues of Opposite Party No.3. Thereafter, the Opposite Party No.3 in its letters dated 7th February, 2005 and 11th February, 2005 (Annexure-R/61 to the rejoinder affidavit) disputed the contents of the minutes of the meeting dated 3rd October, 2003 and 14th October, 2004 and requested for another meeting to resolve the dispute. Further, the letters of Opposite Party No.3 dated 16th February, 2005, 21st February, 2005, 14th March, 2006, 2nd May, 2005, 22nd June, 2005, 30th July, 2005, 31st August, 2005 and 9th September, 2005 to the Petitioner (Annexure-R/62 series to the additional affidavit) were not responded to by the Petitioner. Thus, the Opposite Party No.3 was constrained to move the IFC under the IDP Act, 1993. Further, in the letter dated 26th October, 2013, it was mentioned for the first time that although the claim relates to



financial year 1999-2000 approached MSEFC after six years despite having other fora for redressal of its grievances. Thus, Mr. Nanda, learned Senior Advocate prayed for dismissal of the Writ Petition.

8. Learned Senior Advocates appearing for the parties were heard on several occasions. Lengthy arguments were also made. In fact, after closure of the argument, the judgment was reserved on 2nd January, 2025. But at the time of preparation of the judgment, some clarification both on facts and law was required in view of the peculiar fact and circumstances of the case as well as points raised by learned Senior Advocates at the time of argument of the case. Hence, the matter was listed on 4th April, 2025 under the heading 'To be Mentioned'
9. This Court heard learned Senior Advocates for the parties on the said date on relevant points and the judgment was reserved on the said date. The Petitioner has raised an objection with regard to maintainability, continuance and culmination of the proceeding before the IFC as well as before the Council broadly on three grounds.

i) the IFC as well as the Council had no territorial jurisdiction to entertain and continue with the proceeding;

ii) the Council under MSMED Act, 2006 did not assume jurisdiction to entertain the claim of the Opposite Party No.3;



- iii) the claim of the Opposite Party No.3 was barred by time; and*
- iv) the impugned award is not sustainable both of law and facts.*

10. As narrated above by learned Senior Advocates appearing for the respective parties and the materials available on record, there remains no dispute with regard to the factual aspect of the case. It remains undisputed that the Opposite Party No.3 was awarded with a contract for designing, manufacture, supply, search, erection, testing, commissioning and performance guarantee test on turnkey basis 75 TPH Crushing and Spinning Plant at Jajanga, Odisha. There arose some dispute between the parties for which payment of Opposite Party No.3 was withheld by Petitioner-OMC. The Opposite Party No.3 filed a claim petition before the Industrial Facilitation Council, Thane (IFC) under the provisions of the IDP Act, 1993, as amended in 1998. The claim petition by Opposite Party No.3 was filed on 27th March, 2006 (Annexure-1). The said claim petition was registered as IFC Case No.1 of 2006. On 21st September, 2006, IFC sought for clarification from Opposite Party No.3 as to whether its claim was only for interest or for principal amount along with interest (R-21 to the additional affidavit). The Opposite Party No.3 clarified the same on 28th September, 2006 stating that the claim was for principal outstanding, interest as well as for damages. Thus, the IFC issued notice to the Petitioner on 9th November, 2006 (Annexure-3 to the Writ Petition). On receipt



of the said notice, the Petitioner, vide its letter dated 13th December, 2006 (R-24 to the additional affidavit) sought for extension of two months' time for filing reply in IFC Case No.1 of 2006. When the matter stood thus, MSMED Act, 2006 came into force with effect from 2nd October, 2006, *vide* notification No.S.O.1154(E) dated 18th July, 2006 [*see* Gazette of India, Extraordinary Part II sec.3(ii)] and the Council was constituted under the provisions of MSMED Act, 2006. After the Council was constituted, fresh notices were issued to the Petitioner and Opposite Party No.3. It is worthwhile to state here that although the Petitioner had sought for extension of two months' time to file its reply, but no reply was filed for a considerable period. As such, vide letter dated 4th March, 2013 (Annexure-R-28 to the additional affidavit), the Council informed the Petitioner that despite its letter dated 13th December, 2006, no response was received from the side of the Petitioner. Thus, the Council directed the Petitioner to file its reply within fifteen days from the date of receipt of the said letter failing which, it was indicated that the Council would proceed *ex parte* in the matter. Reminder to file objection was also issued to the Petitioner by the Council on 23rd May, 2013 (Annexure-4 to the Writ Petition). On receipt of the said letter, the Petitioner, vide its letter addressed to the Council, *inter alia*, alleged that pursuant to letter dated 9th November, 2006, learned Advocate appearing for the Petitioner had visited office of the IFC/Council to verify the case record and obtain necessary documents during January,



2007, but the same was found defunct following repeal of the IDP Act, 1993. No communication by the Council was made to the Petitioner thereafter. The Petitioner further alleged that the Council had no jurisdiction to entertain the dispute in view of the Clause 9.20 of the contract and the dispute was also barred by limitation. Thus, for the first time, the Petitioner, vide its letter dated 29th May, 2013, raised an objection with regard to the territorial jurisdiction of the Council and that the dispute was barred by limitation.

10.1 However, adhering to the request of the Petitioner to provide another set of claim petition, the Council sent a set of documents to the Petitioner in respect of the claim petition dated 13th June, 2013. The Petitioner was also directed therein to file its reply within fifteen days from the date of receipt of the documents. On receipt of the said documents, the Petitioner again requested for one month time with effect from 1st July, 2013 to file its reply (Annexure R-32 to the additional affidavit). However, vide letter dated 18th July, 2013 (Annexure R-33 to the additional affidavit), the Council issued notice of final hearing to the Petitioner intimating that despite several notices it had not filed its response to the claim petition. Thus, the Petitioner was directed by the Opposite Party No.2 either to make payment of the claim amount or to file its reply within fifteen days of the date of the notice failing which, the Council would be compelled to proceed with the matter without waiting for the reply of the Petitioner. On receipt of the same, the Petitioner filed its preliminary reply on 8th August, 2013



(Annexure-5 to the Writ Petition). Thereafter, the matter was posted to different dates either on the request of the Petitioner or Opposite Party No.3. Although hearing of the dispute was scheduled on 11th October, 2013, the Petitioner did not attend the hearing before the Council. However, the Council informed the Petitioner that since Opposite Party No.3-Unit is located in Mumbai and was registered with the Industry Commissioner, Mumbai, the Council had jurisdiction to entertain the dispute. Upon receipt of the said letter/notice dated 29th October, 2013, the Petitioner again raised the issue of jurisdiction of the Council as well as limitation to file the claim petition. However, the Council, vide its notice dated 4th/7th January, 2014 (Annexure-R-41 to the additional affidavit), directed both parties to attend the hearing scheduled on 18th January, 2014. The minutes of proceeding dated 18th January, 2014 is annexed to the notice dated 24th / 27th January, 2014 (Annexure R-44 to the additional affidavit), which is relevant in the instant case to be referred to.

“GOVERNMENT OF MAHARASHTRA

*Micro & Small Enterprises Facilitation Council
Konkan Division*

Petition No.01/2006

Petitioner— *M/s Indiana Engineering Works
(Bombay) Pvt. Ltd. Mumbai*

Respondent—*M/s Orissa Mining Corporation Ltd.,
Bhubaneswar*

Delayed Amount

<i>Principal</i>	<i>Rs.4,35,31,677/-</i>
<i>Interest</i>	<i>Rs.1,01,69,616/-</i>
<i>Total</i>	<i>Rs.5,37,01,293/-</i>



The sitting of Micro & Small Enterprises Facilitation Council, Konkan Division Thane was held on 18th January, 2014 at 11 a.m. in the office of the Joint Director of Industries, Konkan Region Thane under the chairmanship of Mr. Dilip Shinde, Chairman, MSEFC & Addl. Divisional Commissioner Revenue, Konkan Division in the presence of following members.

- 1. Mr. Anilkumar Chandorikar, Member Secretary, MSEFC*
- 2. Mr. Umesh Tayade, Member & Chairman, AAMA*
- 3. Mr. Mukesh Gupta, Member & Chairman, APMA*
- 4. Mr. R. K. Singh, Member & AGM, SIDBI.*

During hearing, discussion was held and following decision was taken by Council.

Petitioner was present for the hearing. Respondent never attended the hearing. Petitioner submitted reply to the letter dtd. 21.12.2013 & 26.12.2013 filed by respondent. Council came to the conclusion that respondent is not interested in Conciliation. Therefore, Council decided to terminate the conciliation process, and to start the arbitration process. It is also decided to inform the Respondent that if he remains absent for next hearing, the case will be decided on merit. Next hearing will be held on 1st February, 2014.

*Sd/- (illegible)
Member Secretary
Micro & Small Enterprises Facilitation Council
& Jt. Director of Industries, Konkan Division*

*Sd/- (illegible)
Chairman
Micro & Small Enterprises
Facilitation Council &
Addl. Commissioner (Revenue),
Konkan Division”*

Thus, it appears from the minutes of the proceeding dated 18th January, 2014 that due to non-cooperation of the Petitioner, the Council decided to terminate the conciliation process and



to proceed with arbitration. The Petitioner never challenged the said order dated 18th January, 2014 passed by the Council terminating the conciliation proceeding and deciding to start arbitration under Section 18 (3) of the MSMED Act. Ms. Rath, learned Senior Advocate appearing for the Petitioner, however, raised certain objections with regard to culmination of the conciliation proceeding on 18th January, 2014. It was her submission that the Council by order dated 1st February, 2014, called upon both parties to resolve the dispute amicably and to inform the Council. Thus, the conciliation proceeding was not terminated on 18th January, 2014 and was still alive. The said feeble contention raised by Ms. Rath, learned Senior Advocate is not sustainable inasmuch as, vide order dated 1st February, 2014, the Council had only requested the parties to resolve the dispute amicably and inform the Council. Thus, it is apparent that the Council had never taken up the conciliation proceeding beyond 18th January, 2014.

11. Jurisdiction of IFC/Council to initiate, adjudicate and entertain the dispute :-

Ms. Rath, learned Senior Advocate argued with vehemence that neither the IFC had any territorial jurisdiction to initiate the proceeding by entertaining the claim application and to proceed with the same nor the Council had any jurisdiction to adjudicate upon the dispute. It was her submission that the cause of action, i.e., issuance of work order and execution of the contract dated 13th May, 1994 in respect of the work in question arose within the territorial jurisdiction of the State of



Odisha. The contract dated 13th May, 1994 also specifically provided that any dispute arising out of the contract shall be subject to the exclusive jurisdiction of the Court at Bhubaneswar, Odisha. There was no provision under the IDP Act, 1993 conferring jurisdiction on the IFC to initiate and entertain the proceeding on the complaint of the Opposite Party No.3. MSMED Act, 2006 came into force on 2nd October, 2006 and is prospective in nature. Thus, the provisions under the Act, has no retrospective application more particularly to validate a proceeding, which is null and void *ab initio*.

11.1 It is in fact Clause 9.20 of the contract dated 13th May, 1994 (Annexure-2) deals with '*disputes and jurisdiction*'. It reads as under:-

"The Court/Courts at Bhubaneswar shall have the exclusive jurisdiction for deciding the conflicts or the disputes, if at all it occurs."

It is also not in dispute that Opposite Party No.3 had never approached Court/Courts at Bhubaneswar for resolution of any dispute arising out of the contract. Mr. Nanda, learned Senior Advocate, however, submitted that the Opposite Party No.3, which is a Small-Scale Unit, has been registered in the State of Maharashtra under the IDP Act, 1993. The claim of the Petitioner under the IDP Act, 1993 was registered before IFC Thane (IFC Case No.1 of 2006). It was further argued that although the Petitioner appeared before IFC Thane, but for the first time, it raised the issue of jurisdiction before the



Council (not before IFC) after MSMED Act, 2006 came into force. Mr. Nanda, learned Senior Advocate also referred to Section 32 of the MSMED Act and submitted that proceeding initiated under the IDP Act, 1993 including any act done or action taken under the said Act shall be deemed to have been done or taken under the corresponding provision of the MSMED Act. Thus, Opposite Party No.3 is deemed to have been registered under the MSMED Act. Further, in view of the provisions under Section 32 of the MSMED Act, all proceedings initiated under the said Act shall be deemed to have been initiated under the MSMED Act. The MSMED Act being a special statute overrides the Clause more particularly Clause 9.20 of the contract under Annexure-2. The provisions under MSMED Act confers jurisdiction on the Council to entertain and proceed with the dispute. The Opposite Party No.3 being the Supplier, which is situated and ordinarily carries on its business within the State of Maharashtra. Thus, the Council at Thane had territorial jurisdiction to entertain and adjudicate the proceeding.

- 12.** In view of rival contentions of the parties, this Court thinks it profitable to refer to Section 18 (4) of the MSMED Act, 2006, which reads as under:-

“18. Reference to Micro and small Enterprises Facilitation Council.

xx xx xx

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator



under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

xx

xx

xx”

(emphasis supplied)

Thus, the Council at Thane had the territorial jurisdiction to entertain the dispute as the Supplier, namely, Opposite Party No.3 is located within its jurisdiction. This provision has been made in conformity with the scope and object of the MSMED Act, which provides for facilitating the promotion and development and enhancing the competitiveness of Small and Medium Enterprises. Further, Section 32 of the MSMED Act, 2006 while repealing the IDP Act, 1993, under Sub-section (1) of the said provision, made provision under Sub-section (2), which reads as under:-

“Section 32 Repeal Act 32 of the Act, 1993

(1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act.”

Thus, the proceeding initiated under the IDP Act, 1993 is deemed to have been initiated under corresponding provisions of MSMED Act. In case of **Kanwar Singh Saini (supra)**, it is observed that “*When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a*



right or obligation and enforces the performance thereof in a specified manner, 'that performance cannot be enforced in any other manner'. Thus, for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act." In the case of ***M/s Silpi Industries etc. (supra)***, it is clarified that MSMED Act being a special statute would have overriding effect on the Arbitration and Conciliation Act, 1996 and if the claims come under the ambit of MSMED Act, 2006, the Supplier can approach the competent authority and file its claim under the said Act. The Hon'ble Supreme Court in the said case law further clarified that any agreement to the contrary would have to be ignored in view of the statutory obligation. The same view was taken up by the Allahabad High Court in ***Marsons Electrical Industries(supra)***, wherein, at para-40 quoting ***M/s Silpi Industries etc. (supra)***, it is held as follows:-

"40. Hon'ble Supreme Court in the matter of Silpi Industries (supra) has clearly held that MSMED Act, 2006 being a special Act will have overriding effect on the Arbitration and Conciliation Act, 1996 and if the seller comes under the ambit of MSMED Act, 2006, he can approach the competent authority and file his claim under the said Act. Any agreement to the contrary has to be ignored in view of the statutory obligations. The Court further held that if any registration is obtained the same will be prospective and applies for supply of goods and service subsequent to its registration but cannot operate retrospectively."

In view of the above, Clause 9.20 of the contract under Annexure-2 becomes redundant, in view of the provision



under the MSMED Act, which overrides Clause 9.20 of the Contract.

- 13.** Learned counsel for the parties made elaborate arguments on the jurisdiction of the Council to adjudicate the dispute, but this Court does not feel it necessary to further delve into the issue of jurisdiction in view of the clear statutory provision as stated above as well as the settled position of law. Ms. Rath, learned Senior Advocate appearing for the Petitioner, however, submitted that although preliminary objection with regard to the jurisdiction of the Council was raised, but its objection was rejected and communicated to it vide letter dated 23rd July, 2014 (Annexure-9). On perusal of Annexure-9, it reveals that the petition raising issue of jurisdiction was taken into consideration by the Council and it was decided that in view of Section 21 (3) and Section 32 of the MSMED Act, the Council had jurisdiction to entertain the case, as the Opposite Party No.3-Unit was registered as SSI with Directorate of Industries, Government of Maharashtra. It is submitted that the IFC under the IDP Act, 1993 had no jurisdiction to entertain the claim of Opposite Party No.3, as the entire cause of action arose within the territorial jurisdiction in the State of Odisha. It was also argued that MSMED Act, 2006 is prospective in nature and its provisions cannot be retroactive in nature to validate the claim of Opposite Party No.3 to be entertained by IFC Thane. The argument advanced by Ms. Rath, learned Senior Advocate is not acceptable, inasmuch as although the Opposite Party No.3



filed its claim petition before IFC Thane, but it was taken up for consideration by the Council when MSMED Act, 2006 came into force. By the time the issue of jurisdiction was raised, the Council was in *seisin* of the matter. As discussed, the Council had ample jurisdiction to entertain the claim as Opposite Party No.3 situates within its local jurisdiction. Thus, the argument with regard to prospective application of the provision of MSMED Act in the instant case loses its significance. Be that as it may, the decision with regard to jurisdiction of the Council could have been raised in a properly constituted petition under Section 34 of the Arbitration Act, 1996 read with Section 19 of the MSMED Act, 2006, which the Petitioner has not yet availed. In view of the above, the objection with regard to jurisdiction raised by the Petitioner being devoid of any merit stands overruled.

14. Whether the IFC has any jurisdiction to entertain the claim of Opposite Party No.3;

Ms. Rath, learned Senior Advocate vehemently argued that a preliminary issue of jurisdiction of the IFC, Thane and the limitation as to whether it has the jurisdiction to decide the instant dispute was raised by the Petitioner. It was argued that that the preliminary issue, as aforesaid, was raised pursuant to the 2nd notice dated 23rd May, 2013 issued by the Council. It is further argued that upon receipt of the claim by the IFC, it should have made an endeavour to see as to whether it had jurisdiction to entertain such a claim. Instead, IFC registered the claim petition and mechanically issued notice to the



Petitioner on the claim petition filed by Opposite Party No.3. This Court has vividly discussed the issue of jurisdiction of the Council to entertain the claim of Opposite Party No.3 in preceding paragraphs. Thus, the same needs no reiteration. Contention of Ms. Rath, learned Senior Advocate to the effect that upon receipt of the claim of Opposite Party No.3, the IFC should have made endeavour to see that whether it had the jurisdiction to entertain the same or not, this Court observes that there is no provision under the IDP Act, 1993 or MSMED Act, 2006 obliging the IFC or the Council, as the case may be, to decide the issue of jurisdiction at the threshold unless it is raised by the adversary, namely, the Petitioner. When an application raising such preliminary issue was filed, the Council observed that it had jurisdiction to entertain the proceeding. The veracity of such decision can only be adjudicated under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act, 2006.

- 15.** Section 32 of the MSMED Act, 2006 repealed IDP Act, 1993. Sub-section (2) of Section 32 of the MSMED Act stipulates *“notwithstanding such repeal, anything done or any action taken under the IDP Act was repealed under Sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act”*. It was thus argued by Ms. Rath, learned Senior Advocate that there is no corresponding provision under the repealed Act, i.e., IDP Act, 1993 (as amended in 1998) to entertain such a claim by the IFC to entertain the proceeding/claim raised by Opposite



Party No.3 by the Council. It was further argued that the provision under Section 18(4) being prospective in nature would only be applicable to the claim petition filed after MSMED Act came into force. Ms. Rath, learned Senior Advocate vehemently argued that the claim petition was filed by Opposite Party No.3 before MSMED Act, 2006 came into force. Thus, the same could not have been deemed to be filed under the MSMED Act.

16. Mr. Nanda, learned Senior Advocate appearing for Opposite Party No.3 refuting the same submitted that there cannot be any controversy to the position of law that Opposite Party No.3 was entitled to file a claim under the provisions of IDP Act. Issue with regard to place of filing such claim can only be adjudicated when it is raised. Such a preliminary issue was raised only after MSMED Act came into force. As such, no illegality has been committed by the Council in answering the preliminary issue against the Petitioner observing that the Council had territorial jurisdiction to entertain the claim.

16.1 Upon hearing learned counsel for the parties and on perusal of record, it is apparent that the claim petition was filed by Opposite Party No.3 under Section 4 read with Section 7-A of the IDP Act, 1993 (as amended in 1998). Save and except the objection with regard to territorial jurisdiction of the IFC/Council, it can be safely said that Opposite Party No.3 was legally entitled to raise a claim under the IDP Act, 1993. Section 18(1) of the MSMED Act, 2006 is the corresponding provision entitling the Supplier to make a reference to the



Council for adjudication of the claim. Thus, the Council had apparently committed no error in holding that it had jurisdiction to entertain such claim. As such, the argument of Ms. Rath, learned Senior Advocate that there was no corresponding provision under the MSMED Act to entertain such claim is not sustainable. Ms. Rath, learned Senior Advocate referred to the case law in the case of ***Rabinder Kumar Dhariwal Vs. Union of India***; (2023) 2 SCC 209, which does not deal with a case of the present nature. The observations made therein are in the context of facts and circumstances of the said case, which has no application to the instant case. It is, however, observed in the said case law that the test to identify two statutes are ‘*corresponding*’ is whether *firstly*, subject matter of two statutes is essentially same and *secondly*, main object and purpose are substantially similar. It is further observed therein that the said test, however, cannot be applied to identify corresponding provision, since a much more specific analysis will have to be undertaken. A provision does not correspond to another merely because it deals with the same subject matter. Rather, the test would be whether both provisions are essentially similar or not. In the instant case, core issue to be considered is whether a claim before the IFC was entertainable or not. From the observations made in ***Rabindra Kumar Dhariwal*** (supra), it is apparent that the same requires adjudication, if raised. There was no occasion for the IFC to adjudicate upon the same in the facts and circumstances of the case. The issue



with regard to the territorial jurisdiction would come at a later stage when it is raised. When the issue with regard to the territorial jurisdiction was raised after enactment of MSMED Act, 2006, this Court feels that the Council has committed no error in holding that it had territorial jurisdiction to entertain the same more particularly in view of Section 18 (4) of the MSMED Act, 2006. Thus, the contention raised by Ms. Rath, learned Senior Advocate for the Petitioner, is not sustainable.

17. Whether the claim of the Opposite Party No.3 was barred by time;

It appears from the record that the Petitioner refused to make payment of certain invoices raised by Opposite Party No.3 from 13th February, 1997 till 29th February, 2000 in spite of several requests and reminders of the Opposite Party No.3 to the Petitioner. The Petitioner appears to have proposed to settle the dispute amicably. Till 6th October, 2004 (Annexure-R/6 to the additional affidavit), the Petitioner proposed settlement with Opposite Party No.3. On 18th November, 2004 (Annexure-R/17 to the additional affidavit), the Petitioner forwarded the copy of the minutes of the meeting on 14th October, 2004, which indicated that the Petitioner would float fresh tender to bring in the third party to repair the crusher and price quoted in the tender would be deducted from the outstanding dues of Opposite party No.3. Thereafter, the Opposite Party No.3 in its letters dated 7th February, 2005 and 11th February, 2005 (Annexure-R/61 to the rejoinder affidavit), disputed the contents of the minutes of the meeting



dated 3rd October, 2003 and 14th October, 2004 and requested for another meeting to resolve the dispute. Further, the letters of Opposite Party No.3 dated 16th February, 2005, 21st February, 2005, 14th March, 2006, 2nd May, 2005, 22nd June, 2005, 30th July, 2005, 31st August, 2005 and 9th September, 2005 to the Petitioner (Annexure-R/62 series to the additional affidavit) were not responded by the Petitioner. Apparently aforesaid series of communications constrained the Opposite Party No.3 to move the IFC under the IDP Act, 1993. Further, in the letter dated 26th October, 2013, it is stated for the first time that although the claim relates to financial year 1999-2000, the Opposite Party No.3 approached IFC after six years despite having other fora for redressal of its grievances. No specific objection with regard to limitation appears to have been raised by the Petitioner either before the Council or in the Writ Petition. However, from the series of events, as discussed above, it cannot be said that the claim of the Opposite Party No.3 was barred by limitation. Had such an issue been raised, the Council would have an occasion to adjudicate the same. But, the Petitioner preferred not to participate in the proceeding before the Council and allowed it to be adjudicated *ex parte*. In view of the above, this Court feels that the objection with regard to limitation raised by the Petitioner is not sustainable.

18. Legality of the Award passed by the Council :-

Ms. Rath, learned Senior Advocate vehemently urged that there are several procedural irregularities and improprieties in



passing the impugned award under Annexure-10. Relying upon *Jharkhand Urja Vikas Nigam Limited (supra)*, it was argued that the award is a nullity as the Council had neither taken up the conciliation proceeding nor arbitration before passing the *ex-parte* award under Annexure-10. It was argued by Ms. Rath, learned Senior Advocate that minutes of the hearing held on 18th January, 2014 in IFC Case No.1 of 2006 clearly indicated that “.....*Council come to the conclusion that Respondent is not interested in conciliation. Therefore, the Council decided to terminate the conciliation process and to start the arbitration process. It is also decided to inform the Respondent that if remains absent for next hearing, the case will be decided on merit....*” Again, vide letter dated 30th January, 2014, the Council communicated the Petitioner and Opposite Party No.3 referring to the hearing held on 18th January, 2014 stating that “*arbitration order pertaining to your petition enclosed herewith for your information.*” In spite of the same, the Council vide its letter dated 7th February, 2014 (Annexure-8) referred to order dated 1st February, 2014, wherein, it is indicated that “*Council heard the both. Council advised both to solve the issue amicably and inform the Council accordingly.*” Thus, it is apparent that in spite of the order dated 18th January, 2014 to terminate the conciliation, the Council again proceeded to direct both parties to amicably resolve the issue and intimate the Council. Thus, the process of conciliation was still on beyond 18th January, 2014. Ms. Rath, learned Senior Advocate thus



submitted that no order thereafter was passed terminating the conciliation proceeding. As such, the award, which is stated to be an outcome of the arbitration proceeding is null and void. As such, the writ petition is maintainable in view of the ratio in ***Jharkhand Urja Vikas Nigam Limited (supra)***. Mr. Nanda, learned Senior Advocate for Opposite Party No.3 objecting to the same submitted that after termination of the conciliation proceeding, vide order dated 18th January, 2014 by the Council, it had only advised the parties to settle the matter amicably and inform the Council without involving itself in the conciliation. The said order can never be construed as a continuation of the conciliation proceeding, as alleged by the Petitioner. In order to settle the matter amicably, even after termination of the conciliation proceeding, the Council provided another opportunity to the parties to settle the matter amicably without involving itself. Thus, there was no illegality on the part of the Council to proceed with the arbitration and pass *ex-parte* award under Annexure-10.

19. Giving an anxious thought to the rival contentions of the parties, this Court on perusal of records finds that vide order dated 18th January, 2014, the Council holding that the Petitioner is not interested in conciliation, terminated the conciliation proceeding and directed the parties to participate in the hearing of the case thereby initiating arbitration proceeding. As such, the ratio of ***Jharkhand Urja Vikas Nigam Limited (supra)*** has no application to the instant case. Minutes of hearing held on 1st February, 2014, which was



communicated to the parties on 7th February, 2014 by the Council, does not indicate that the Council had taken up the conciliation proceeding beyond 18th January, 2014. It only provided another opportunity to the parties, namely, the Petitioner and the Opposite Party No.3 to settle the dispute amicably and inform the Council accordingly. Thus, it is clear from the said order that the Council never involved itself in taking up the conciliation proceeding beyond 18th January, 2014. As such, the contention of Ms. Rath, learned Senior Advocate in that regard, is not sustainable.

- 20.** An argument was advanced by Ms. Rath, learned 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.

21. Cumulative assessment of the facts and circumstances of the case, argument advanced as well as case laws referred to, this Court is of the considered opinion that the writ petition merits no consideration. Learned counsels for the parties have referred to several case laws and have also made arguments on minute details of the proceeding before the IFC as well as the Council. In view of the discussions made above, this Court does not feel it necessary to discuss the same in detail.
22. Accordingly, the writ petition being devoid of any merit stands dismissed, but in the facts and circumstances, there shall be no order as to costs.

(K.R. Mohapatra)
Judge

*Orissa High Court, Cuttack,
Dated 18th June, 2025/s.s.satapathy*