



ARBITRATION AND CONCILIATION

Orissa High Court Holds MSEFC Awards Can Only Be Challenged Under Section 34 of the Arbitration Act

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Introduction

The intersection of special statutes, such as the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), and general arbitration law under the Arbitration and Conciliation Act, 1996, continues to generate jurisdictional questions. A recent judgment by the Orissa High Court in *M/s Odisha Mining Corporation Ltd. v. Union of India & Ors.* (W.P.(C) No. 22236 of 2014) addresses such a conflict.

The Court examined whether an arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEFC), Thane, challenged on grounds of lack of jurisdiction, breach of natural justice, and procedural impropriety, could be quashed through a writ petition. The judgment clarifies the territorial jurisdiction of MSEFCs and reinforces the statutory supremacy of Section 34 of the Arbitration Act as the sole remedy against MSME arbitral awards.

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Factual Background

The case stemmed from a 1994 contract between Odisha Mining Corporation Ltd. (OMC) and M/s Indiana Engineering Works (Mumbai-based) for the supply and commissioning of a crushing and screening plant in Keonjhar, Odisha. Disputes emerged over alleged underperformance and unpaid invoices. Indiana Engineering, a registered small enterprise in Maharashtra, approached the Industries Facilitation Council, Thane, in 2006 under the repealed Interest on Delayed Payments Act, 1993. The Council, later functioning under the MSMED Act, terminated conciliation and proceeded with arbitration under Section 18(3), ultimately passing an ex parte award in 2015. OMC challenged this process before the Orissa High Court via a writ petition under Articles 226 and 227 of the Constitution.

Procedural History and Timeline

Understanding the procedural journey of this dispute highlights the longstanding nature of the case and the legal hurdles encountered by both parties:

- **1994:** Contract executed between OMC and Indiana Engineering for plant supply and commissioning in Odisha.
- **2006:** Indiana Engineering filed proceedings before the Industries Facilitation Council, Thane, under the 1993 Act.
- **2007:** The MSMED Act came into force; the proceedings continued under the new regime.
- **2013–2014:** Conciliation and arbitration proceedings occurred before the Thane MSEFC.
- **January 2014:** Conciliation formally terminated under Section 18(2) of the MSMED Act.
- **February 2015:** Ex parte arbitral award passed against OMC.
- **August 2014:** OMC filed a writ petition before the Orissa High Court.
- **June 2025:** High Court dismissed the petition, upholding the MSEFC's jurisdiction and process.

Key Legal Issues and Findings

1. Whether Writ Jurisdiction Could Override the Arbitration Framework

OMC argued that the award was rendered without compliance with due process: they were not properly heard, notices were not effectively served, and the arbitration commenced without addressing preliminary objections. Based on these grounds, OMC

sought to invoke the writ jurisdiction of the High Court to quash the award passed by the MSEFC.

However, the Court reiterated that arbitral awards passed under the MSMED framework are subject to challenge only under Section 34 of the Arbitration and Conciliation Act. It relied on the Supreme Court's decision in *M/s Silpi Industries v. Kerala State Road Transport Corporation*^[1], which held that once the statutory arbitration mechanism under Section 18(3) of the MSMED Act is triggered, the only available remedy is a challenge under Section 34. The Court also echoed the principle in *Whirlpool Corporation v. Registrar of Trademarks*^[2], that writ jurisdiction is not maintainable where a statutory remedy exists, unless there is a clear case of lack of jurisdiction or breach of fundamental rights.

2. Territorial Jurisdiction of the Thane MSEFC

OMC also contested the territorial jurisdiction of the Thane MSEFC, citing that the entire cause of action, including project execution and contractual performance, arose in Odisha, and that the contract contained an exclusive jurisdiction clause favoring Bhubaneswar courts.

The Court, however, relied on Section 18(4) of the MSMED Act, which grants jurisdiction to the MSEFC where the supplier is located. Since Indiana Engineering was registered in Maharashtra, the Thane Council had legitimate jurisdiction. The Court emphasized that statutory jurisdiction overrides contractual jurisdiction clauses, particularly when derived from a special enactment, such as the MSMED Act.

3. Validity of Proceedings under the Repealed IDP Act

OMC contended that since the claim was originally filed under the 1993 Act, the Thane MSEFC had no jurisdiction post-repeal. Rejecting this, the Court relied on Section 32(2) of the MSMED Act, which explicitly saves actions taken under the repealed law and deems them to have been taken under corresponding provisions of the MSMED Act.

Implications for MSME Suppliers and Buyers

This judgment has far-reaching consequences for suppliers, buyers, and legal professionals engaged in commercial contracts governed by the MSMED Act.

Implications for MSME Suppliers

- **Expanded Jurisdictional Clarity:** MSMEs can initiate proceedings before the MSEFC in the state of their registration, irrespective of the buyer's location or the place of contract execution.
- **Speedier Redress:** By affirming the limited scope of writ jurisdiction, the judgment reinforces the MSMED Act's framework for expedited dispute resolution.
- **Enforceability of Ex Parte Awards:** Arbitral awards passed ex parte remain valid and enforceable unless set aside under Section 34 of the Arbitration and Conciliation Act. Procedural irregularities alone will not invalidate such awards.

Implications for Corporate Buyers

- **Statutory Forums Prevail Over Contractual Clauses:** Exclusive jurisdiction clauses in commercial agreements do not override the statutory jurisdiction conferred on MSEFCs under Section 18(4) of the MSMED Act.
- **Strict Timelines for Challenge:** Objections to MSEFC awards must be filed strictly within the limitation period under Section 34 of the Arbitration Act. Writ petitions are not a substitute for statutory remedies.
- **Importance of Early Engagement:** Non-participation in conciliation or arbitration proceedings may result in binding ex parte awards, exposing buyers to significant financial liability.

Drafting Considerations for Legal Teams

In light of the judgment, legal teams should also reconsider their approach to contract drafting and risk planning when dealing with MSMEs:

- **Review Dispute Resolution Clauses:** Draft contracts with dispute resolution language that accounts for the overriding effect of the MSMED Act and the statutory jurisdiction of MSEFCs, particularly when one party is a registered MSME.
- **Proactive Risk Assessment:** In transactions involving MSMEs, early legal review and strategic planning can help mitigate jurisdictional uncertainty and limit exposure to enforcement risks, particularly where awards may be passed ex parte.

Conclusion

This decision by the Orissa High Court reaffirms the primacy of the MSMED Act as a special, self-contained legal regime for redressal of disputes involving micro and small enterprises. By affirming the territorial jurisdiction of the MSEFC based on the supplier's location and by limiting judicial interference to statutory remedies under Section 34 of the Arbitration Act, the Court strengthens the predictability and finality of MSME arbitration proceedings.

For buyers, this is a cautionary tale: non-cooperation or procedural objections cannot bypass the structured dispute resolution system of the MSMED Act. For suppliers, it reaffirms their right to seek expeditious redress from MSEFCs, regardless of where the buyer or contract performance is located.

Legal practitioners advising on MSME disputes should ensure procedural rigor and timely responses before MSEFCs, as post-award challenges are now tightly circumscribed.

For more details, write to us at: contact@indialaw.in

[1] (2021) 18 SCC 790

[2] (1998) 8 SCC 1

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