

(2021) 11 OHC CK 0182
In the Orissa High Court
Case No : Writ Petition (C) No. 28464 Of 2020

Rolta India Ltd

APPELLANT

Vs

Micro Small And Medium Enterprises Facilitation Council And
Another

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Constitution of India, 1950 — Article 226
Micro, Small and Medium Enterprises Development Act, 2006 — Section (2)18, 19
Insolvency and Bankruptcy Code, 2016 — Section 14

Citation : (2021) 11 OHC CK 0182

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S.S. Jan, Anupam Dash, Mohit Agarwal

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

W/P.(C) No.28464 of 2020 and I.A. no.6501 of 2021

1. Mr. Jan, learned advocate appears on behalf of petitioner and submits, impugned is order dated 10th December, 2019 passed in MSEFC Case no.35 of 2019 (parties own case) before the Council. According to him, the award was straightaway made without compliance with mandate in sub-section (2) in section 18 of Micro, Small and Medium Enterprises Development Act, 2006, for the Council to either itself conduct conciliation or seek the assistance of any institution or centre providing alternate dispute resolution services. Without fulfillment of this mandate, the Council could not have proceeded to award in the reference. He submits further, he has other points regarding there having been order of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016, in respect of his client as corporate debtor. He submits still further, purported reason for the award is that his client accepted petitioner's claim by counter of his client, received by the Council on 22nd June, 2019. He draws attention to his

client's letter dated 21st June, 2019 and submits, this letter was treated by the Council to be his client's counter. In it, dispute was raised and more importantly, operation of general terms and conditions of supply relied upon. Discussion was also mentioned and extension of time of thirty days to reply each point individually was requested. There is no order of the Council on record granting the extension. Instead reliance on the writing as purported acceptance by his client.

2. Mr. Agarwal, learned advocate appears on behalf of opposite party no.2. He submits, his client is supplier under the Act. Though there was request made for extension of time but no further material by way of pleading or otherwise was filed by petitioner before the Council. In the circumstances, the Council duly inferred acceptance on part of petitioner, to make and pass the award. There is efficacious remedy provided under the Act under section 19. There should be no interference.

3. On hearing parties Court has nothing to go on to have satisfaction that mandate in section 18, requiring conciliation, was fulfilled. Mr. Agarwal relies on several orders in writ petitions dealt with by Coordinate Bench and order dated 26th October, 2020, by which Petition for Special Leave to Appeal(C) no.10248 of 2020 (Southco Utility and others v. Director of Industries and others) was dismissed. He submits, those orders were on respective petitioners, for them to appeal as provided under section 19.

4. On query from Court it has been ascertained that execution proceeding has been launched by opposite party no.2. There was an order of moratorium, which subsisted for some time. Court is of view that provisions for adjudication and recovery in the Act are to be strictly construed on fulfillment of the mandate. There must have been intent and purpose of Parliament to legislate in section 18, requirement for conciliation. Without having conciliation, for the Council to straightway pass award appears to be an act without jurisdiction, to warrant interference under article 226, in spite of available alternative remedy. Reliance was placed on judgment of Supreme Court in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai reported in AIR 1999 SC 22, by Mr. Jan.

5. Proceeding in Execution Case no.247 of 2020 pending before the learned District Judge, Cuttack is stayed till disposal of the writ petition. I.A. no.6501 of 2021 is disposed of. Post the writ petition for hearing.

6. List on 15th December, 2021 at 2.00 p.m.