

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK****ARB No.61 of 2023**

M/s. Andhavarapu Power Projects (P) Limited, Andhra Pradesh **Applicant**

-Versus-

Odisha Renewable Development Agency, Khurda **Opposite Party**

Advocates appeared in this case:

For Applicant : Mr. Avijit Pal, Advocate

For Opposite Party : Mr. Bijay Kumar Dash, Advocate

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA,
ACTING CHIEF JUSTICE**

J U D G M E N T

Date of hearing and judgment: 19th March, 2025

ARINDAM SINHA, ACJ.

1. Mr. Pal, learned advocate appears on behalf of applicant and submits, disputes and differences have arisen in respect of agreement dated 22nd January, 2010 between opposite party and his client. His client gave commencement notice dated 25th July, 2023. There was no response.



2. He refers to clause 19 in the agreement and submits, it is the arbitration clause. The clause is reproduced below.

“19. In case of any dispute regarding any clause in this agreement, the matter shall be referred to OERC and the decision of OERC shall be binding on both the parties.”

He relies on **judgment dated 11th August, 2017** made by coordinate Bench in **ARBP no.19 of 2016 (M/s. Enzen Global Solutions Pvt. Ltd. v. Central Electricity Supply Utility of Odisha)**. He submits, similar clause was in the agreement between parties therein. The referred authority refused to adjudicate. There was, by the judgment, appointment of arbitrator.

3. Mr. Dash, learned advocate appears on behalf of opposite party and submits, there is no arbitration agreement between the parties. With reference to clause 19 in the agreement he submits, his client had agreed to refer disputes to Orissa Electricity Regulatory Commission (OERC). The authority vide order dated 3rd June, 2023 refused to enter into reference of the disputes on direction for parties to approach appropriate forum. As such, clause 19 in the agreement stands worked out. The application for appointment of arbitrator therefore is required to be dismissed.



4. It is clear from above reproduced clause 19 in the agreement that reference was to be to OERC. Capacity of OERC to adjudicate was not mentioned in the agreement. The authority considered the question of reference by its said order dated 3rd June, 2023 and concluded that the statute does not permit it to enter into the reference. In the circumstances, contention of Mr. Dash that the agreement clause stands worked out, must be accepted.

5. Reference to arbitration can only be compelled when there is existence of an arbitration agreement. Sub-section (6-A) in section 11, Arbitration and Conciliation Act, 1996 is reproduced below.

“(6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

On application to Court for appointment of arbitrator, existence of arbitration agreement is to be looked into. In this case, there is no such existence.

6. Paragraph 12 from **order dated 11th August, 2017** (supra) is reproduced below.



12. Since the parties have through their conduct and various communications (dated 05.04.2014, 22.02.2014, 11.02.2016 and 30.06.2015) clearly admitted that in case the dispute cannot be resolved amicably, as a last resort an Arbitrator is to be appointed, I am of the opinion that in the facts of the case, the dispute resolution clause-17 of the agreement would actually amount to arbitration clause. The same would also be clear from the office order dated 22.04.2014 issued by the Chief Executive Officer, CESU, wherein, with regard to the dispute with the petitioner-Enzen, it has been stated that the settlement of this dispute through “The arbitration and Reconciliation Act” should be the last option. This would amount to own admission on the part of the CESU that if the matter cannot be resolved amicably, the provisions of the Arbitration and Conciliation Act, 1996 would come into force.

(emphasis supplied)

In this context, clauses (b) and (c) under sub-section (4) in section 7 are reproduced below.

“7.

(4) (b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or



(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.”

It is thus clear that coordinate Bench had concluded arbitration agreement from communication between the parties in that case as well as their conduct in Court. Thus, existence of arbitration agreement in that case stood established for coordinate Bench to be of the opinion recorded in above reproduced paragraph.

7. In this case, there does not exist arbitration agreement. As such, there cannot be appointment of arbitrator by Court.

8. The arbitration petition is dismissed.

9. The dismissal will not prevent applicant from finding remedy in law including seeking exclusion of time taken.

**(Arindam Sinha)
Acting Chief Justice**

M. Panda/S. K. Behera

**Signature
Not Verified**

Digitally Signed
Signed by:
MRUTYUNJAYA
PANDA
Designation: Secretary
Reason: Authentication
Location: High Court of
Orissa, Cuttack
Date: 19-Mar-2025
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